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TESTIMONY

TAKEN BEFORE THE

Committee of the Senate and House of Assembly

OF THE

STATE OF NEW JERSEY

TO

Investigate the Granting of Riparian Lands by the State, Etc.

VOL. II.

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SENATE CHAMBER, STATE HOUSE.

Trenton, N. J., Sept. 24, 1906.

Meeting of Special Committee of the New Jersey Legislature to Investigate the Granting of Riparian Lands by the State, etc.

PRESENT:

SENATORS WAKELEE (Chairman) and MINTURN, and ASSEMBLYMEN BARBER, JONES and HOLCOMBE.

ATTORNEY-GENERAL MCCARTER and ASSISTANT ATTORNEY-GENERAL DUFFIELD.

THE ATTORNEY-GENERAL.—Before proceeding with the regular conduct of the case I feel it important, in order that the significance of the matters to be brought to the committee's attention may be fully appreciated, to make a short statement.

CHAIRMAN WAKELEE.—The Committee will be glad to hear you.

THE ATTORNEY-GENERAL.—The Committee will remember that in the case of the Goetschius grant about which we have heard so much, there had been a Legislative grant made to the Annette heirs giving to them certain rights and privileges by the Legislature, away back before the formation of the Riparian Commission, and the Committee will further bear in mind that one of the questions that I have been trying to have elucidated in the course of this investigation is, why the fourth section of the act of 1869 was not applicable when Mr. Goetschius, claiming under a Legislative grant, came and asked the Riparian Commission for a grant. The fourth section of that act, as the Committee will remember, provided that in such cases the Riparian Commissioners were authorized to make either a lease or a grant; if they made a lease they must charge at the rate of seven per cent., I think it is, and if they made a grant it

must be at the rate of fifty dollars a foot. If either one of these rules had been adopted in the Goetschius case a very considerable sum of money would have been realized for the benefit of the State School Fund. But as a matter of fact we know that only fifty dollars was charged, a mere nominal consideration. Two witnesses who have already appeared before this Committee have been examined with reference to that matter at some length. The first was Mr. Record, the former counsel of the Board, who, as the Committee will remember, gave a long opinion in favor of a nominal consideration and when asked why the fourth section of the act of 1869 providing for fifty dollars a foot was not in vogue, after failing to recognize his own compendium of the law which contains such a law and frankly conceiving that he did now remember the act, finally said that he did not think the act was applicable and he did not think at the time the grant was made that the act was applicable. In other words he frankly stated that he had the act in mind when he gave the opinion but did not think it was applicable because he believed that in some way the act had been repealed by the act of 1871, just two years afterwards. He could not refer to any act but said that there was such an act. That is as I recall his testimony. I may be perhaps inaccurate in some respects.

The other witness who was examined upon that subject was Mr. Fisk, and he said that he did not think at that time, and does not now think, that the fourth section of the act of 1869 was applicable and the state entitled to get at least fifty dollars a foot in such a case because he believed that there had been an implied or expressed repealer in some way of that fourth section.

I have searched in vain for an implied or expressed repealer, but there of course may be a difference of opinion as to whether there was or was not an implied repealer.

With this short review I propose today to bring to the Committee's attention this significant fact. In 1899, two years before the Goetschius grant was made, the Hoboken Land & Improvement Company filed its petition which is here (producing application of the Hoboken Land & Improvement Company for riparian grant to lands under water in the Hudson river, dated March 29, 1899) which I will offer in evidence, setting out that the Hoboken Land & Improvement Company is a corporation created under and by virtue of the provisions of an act of the Legislature entitled, "An Act to incorporate the Hoboken Land & Improvement Company" and giving the date of its charter. Second, that in and by the said act said company was authorized and empowered to purchase, hold, im-

prove and dispose of both real and personal property, and especially to purchase, fill up, occupy, possess and enjoy all lands covered with water fronting and adjoining the lands that might be owned by them in the city of Hoboken. Third, that under and by virtue of the provisions of the said act the company had acquired soon after the passage of the law, or charter, a considerable portion of land in the city of Hoboken, which it still retained and on the 1st of October, 1869, it conveyed a portion of the water front to the Camden & Amboy Railroad and Transportation Company by deed, reciting and describing it. That by the subsequent conveyances and acts of the Legislature, the property so conveyed has since become vested in the United New Jersey Railroad and Canal Company. That the Hoboken Land and Improvement Company is about to obtain a re-conveyance of said property from the United New Jersey Railroad & Canal Company. That no grant of the riparian rights of the State in the southerly fifty feet of the said tract appears ever to have been made by the Riparian Commissioners and the Governor under the provisions of the act of 1869 above referred to.

"Therefore," the petition says, "to assure the title to the same, and to obtain the benefit of the provisions of the fourth section of said act, and with the consent of the United New Jersey Railroad & Canal Company, as evidenced by a writing under the seal of said company hereto attached, the Hoboken Land & Improvement Company respectfully applies for a grant of the title and riparian rights of the State in the lands under water in front of the southerly fifty feet of said tract and offers to pay to the State for the same the sum of fifty dollars per lineal foot measured on the bulkhead line, as provided in said act."

So that the Committee will observe that here was a case where an old company claimed a Legislative grant of a right to improve property in front ofthe city of Hoboken, most valuable water front, and then came in, notwithstanding its Legislative grant, for a deed just as Goetschius did, but said, "We rely upon the fourth section of the act of 1869 which says that we are entitled to a deed upon paying fifty dollars a front foot."

The records of the Board show that the question was presented two years before the Goetschius grant, to the counsel of the Board and to the Attorney General and I hold in my hand an opinion signed by them, by Mr. Record, and the then Attorney General, Mr. Gray, which is most significant. It shows that the act of 1869 was not considered to be repealed as Mr. Record testified and as Mr. Fisk said he thought—this is in 1899 mind you—but in active effect,

recognized as applicable, and by virtue of the opinion the grant was made of water front in the city of Hoboken pursuant to the very terms and provisions of the fourth section of the act of 1869.

I will read the opinion; it is as follows :—

"To the Honorable, The Riparian Commissioners of the State of New Jersey.

"Gentlemen :

"In reference to the application of the Hoboken Land & Improvement Company for a grant of lands in the City of Hoboken, on the waters of the Hudson river, the opinion of the counsel of the Board and of the Attorney General has been asked as to the power of the Board to make the grant, and as to the rate of compensation which should be charged.

OPINION.

"We are of the opinion that the Hoboken Land & Improvement Company became, by its charter, as interpreted by the Court of Errors and Appeals of New Jersey, in the case of the Hoboken Land & Improvement Company vs. the City of Hoboken,7 Vroom, page 542, and in the case of the City of Hoboken vs. Pennsylvania Railroad, (124 U. S., page 656), the owner of all the lands lying between the original high water mark and the exterior wharf line, when established, including the land covered by this application.

"We are also of the opinion that if the Hoboken Land & Improvement Company desires to have 'a paper capable of being acknowledged and recorded' as provided for in the act of 1869, section 4, the Commission may execute such a paper, and inasmuch as under the provisions of Section 1 of the Act of April 6, 1871, the power is given to the Commission to grant or lease in all cases in which in their discretion they shall think such grant or lease should be made, such rights, privileges and franchises as they are authorized to grant in cases coming directly within the fourth section of the act of 1869, we think the Commission may fix such price as they, guided by the price named in the act of 1869, should think, under the circumstances of this case, to be a reasonable one."

Then the opinion discusses another question which it is not necessary for me to go into.

So that the record discloses that by an opinion of the then Attorney-General, concurred in by the then counsel of the Board, in 1899, it was the view of both that the least sum that a person could get a grant for under such circumstances as in the Goetschius case was the statutory rate of fifty dollars a foot. It might be more, but could not under any circumstances be less.

Now, the Committee will bear in mind that it appears in the record of the testimony on the second day's session of this investigation that when Mr. Payne was on his early direct examination he said that the first time the Goetschius application was presented to him he stated to the applicant's counsel, I think it was Mr. Babbitt, "why, you will have to pay under the statute, fifty dollars a foot at least." Babbitt went away and came back with an opinion of Mr. Record that they should pay fifty dollars, and in justification of that opinion the former counsel of the Board says that he did not think the act was applicable, notwithstanding the fact that just two years before an opinion had been given by him and concurred in by the Attorney-General that it was considered to be very much alive and kicking and directly applicable to a case of that kind.

The significance of the whole thing is that it makes very plain to me the further we delve into this thing that in this Goetschius case some of the most valuable property of this State was given away for nothing under not only a total misapprehension of the law but in direct contradiction of the views of the then attorney of the Board, in which the then Attorney-General concurred and it makes, to my mind, a situation that is utterly inexplicable as to why the State lost that valuable right, if it lost it, and I feel very glad to be able to have an opportunity, by the instructions of the Riparian Commission to undertake to upset that Goetschius grant.

SENATOR MINTURN.—Did the Pennsylvania Railroad have a Legislative grant for that piece of land they held that you referred to?

THE ATTORNEY-GENERAL.—No; I do not think they did. I have not examined that but it does not appear in this petition that they did. The history of the title, as shown in the petition, Senator Minturn, is that the Hoboken Land & Improvement Company got it originally under a Legislative grant and then conveyed away part of it to the Pennsylvania Railroad and then the Pennsylvania Railroad had given them back a deed so that they got re-established in the original title and as such owner they ask in the petition for a riparian grant.

I feel—I do not want to be personal in this matter, I have no ax to grind at all about this thing, but I feel like saying one thing more before I proceed and that is that I consider it an important ascertainment by this Committee in its investigations thus far that so intelligent and able a man as Mr. Willard C. Fisk, should have been so inattentive to the duties of his office as Vice Chairman of this Board—a lawyer of character and standing and great intelligence—as that within two years after that opinion was rendered and

received by the Board, which is all a matter of record, and that Hoboken Land & Improvement Company grant made, he should have ignored the whole question. Perhaps you might understand how a layman would be perhaps regardless of inconsistencies in their legal attitude, but how a lawyer, and the Vice-Chairman of the Board, could have over-looked that and concurred in the vote of the Goetschius grant on the theory that the act of 1869 was inapplicable, I cannot understand, and I feel that, thus far at least, we have shown the most flagrant case of gross inattention to duty on the part of some of the Commissioners at least which is significant and which it is hoped will not be characteristic of the Commission in the future.

I will now call Mr. Cloke.

WILLIAM CLOKE recalled. Examined by the Attorney-General.

Q. You, I think, are the present Vice-Chairman of the Board? A. Yes, sir.

Q. As you have already testified? A. Yes.

Q. You, I think, if you did not purpose, certainly concurred in a resolution recently passed by the Board as follows: "On motion the secretary was directed to afford the Attorney-General every facility of the office and to assist the Attorney-General in the examination and understanding of any matter which had been the subject of consideration by the Riparian Commission." You remember that resolution? A. I was not present at that meeting, but I—

Q. Approved of it? A. I fully concurred in it, approved of it; yes.

Q. You heard, I think, that the Attorney-General wrote the Board and called attention to the fact that this investigation was under way and asked the assistance of the Board and its Secretary in examining its records and papers, and you knew of the adoption of this resolution and concurred in its passage? A. I do not recall that I heard you had written to the Board. I was not present at that meeting and I have not read the minutes of it since; therefore, I do not recall that.

THE ATTORNEY-GENERAL.—I was under the impression—a mere assumption on my part, I didn't know anything about it—that Mr. Cloke was present at the meeting at which that resolution was passed. I only offer proof of the fact that it was passed to indicate what must have been the view of the committee before this, the fact that it was the wish, and the spontaneous and hearty wish, of every member of the Board that I should be given every opportun-

ity of investigating the papers and documents of the office and also that I should be assisted in that matter by the Secretary of the Board, Mr. Payne, and that it has been with that object and that object alone that I have asked Mr. Payne's assistance and Mr. Payne has assisted me. I hold no brief for anybody in this investigation, for or against; I am endeavoring to elicit facts and if Mr. Payne is actually assisting me in the matter it is because he alone has the details of all these things at his command and therefore he is helping me in that way and I know of no ulterior motive that he has and I certainly have none myself excepting to present these facts to the Committee.

Q. How long have you been connected with the Board? A. Since 1894.

Q. Who have been your associates during your term? A. The first term my associates were Miles Ross, Willard C. Fisk, who was the Vice-Chairman, and John I. Holt.

Q. That continued until— A. Until Mr. Ross died, when John J. Farrell was appointed in his place.

Q. And that continued— A. That continued until two years ago.

Q. When the present Board went in? A. Yes, sir.

Q. The salary of the present members of the board I think is fifteen hundred dollars a year? A. Yes, sir.

Q. How many meetings does the Board ordinarily have a year, regular meetings? A. One a month.

Q. I want to direct your attention first to some grants that were made and that have already been referred to in the testimony of Mr. Fisk and to get your assistance, because that is all I am after, if I may, towards explaining the rationale of them and I therefore, with that view, direct your attention to the fact that in 1895, in January, a grant was made by the Board at Pleasant Valley on the Hudson river at the rate of $43.33 a foot; in the same month, property just north of it, at $50 a foot; in May, 1896, one year afterwards, to Ellis & Co., just north of the Susquehanna Railroad, at $87 a foot; in 1889, to White & Leonard, just north of the New York & Susquehanna Railroad at $60 a foot; in 1900 to the Morris Building Company, half a mile south, at $60 with $20 off for building, as was elucidated the other day, within a certain time. In January, 1902, to the Water Front Improvement Company at $60 a foot, and this Water Front Improvement Company was about four-fifths of a mile or a little further perhaps from the Ellis & Leonard grants and another in 1903 at $60 and in June, 1906, to the Edgewater Basin Company at $70. Now, I am frank

to say to you, Mr. Cloke, looking at these grants as I do, not having been a Riparian Commissioner for a long time, they strike me as varying up and down, like mountains as I have said, to use a simile—without any rational basis and yet I may be mistaken; if you can explain how I am mistaken I shall be glad. A. I think, Mr. Attorney-General, that it is impossible at this time, remote from those transactions, to give in detail and clearly the reasons that actuated the Board in making those prices. The proceedings before the Board, I will say to the Committee and to the Attorney-General, are like this: We hold our meetings say once a month, and sometimes oftener and when we meet there is very often a large number of people present representing the different claimants or applicants; lawyers,business men, capitalists, engineers, real estate men, etc.; they remain in the ante-room while the Board meets in its room, remote from these people. Mr. Payne, the secretary and engineer, has a list of the cases that are coming up at that meeting and the Vice Chairman generally goes over it with him before the opening of the meeting and gets a general description of the character of the applications. When the first case comes up the counsel, or others who may be there to represent the claimant, are called in before the meeting and they make their arguments, present their facts, and make their arguments, and we question them, sometimes at considerable length. Then they retire and we discuss the matter in executive session. We take the case up. There are a variety of reasons that have been adverted to in the testimony at different times during the progress of this investigation, affecting the price of these grants or leases. The case is considered in executive session and if we desire further information we send out again for some of the counsel or engineers or real estate men or whatever they may be who are there representing the case, to come in again and give us further information about it. In some cases, if we are unfamiliar with the topography of the region where the application is made, we appoint a committee, or send the engineer, or go in a body, to visit it—make a personal investigation. After threshing the matter out in every possible effort to arrive at an equitable solution of it, we fix its price. Then the next case comes in, and so on. I need not be prolix over this, I want to give the Committee and you, Mr. Attorney-General, an idea of how we arrive at these conclusions. We then make the price to the best of our ability, taking into consideration the various circumstances and conditions and facts which are laid before us. As you have heard in the testimony of some of the other witnesses the conditions vary, largely vary, even

where contiguous grants are asked for. It is impossible for me, I don't know how it may be with the other members of the Board, to recall the circumstances and conditions that produce in our minds, or in my mind, the conclusion that I arrived at in each of these individual cases. A very distinguished lawyer the other day in talking to me about the difficulty, the great difficulty, under which the court, the higher courts of New Jersey, now labor, said that it was the custom, or had been the custom, to argue sixty or seventy cases in the briefest possible manner, the briefest possible time being allotted to each counsel in cases involving very large interests, and that the Court limited them to this because the Court was so pressed by the overwhelming amount of business before it. Now, he said, they had to take these cases, argued in this perfunctory way, and go off on their summer vacation and come back and return to their circuits and Supreme Court business and one thing and another and go into the Court of Errors and he said, "It is perfectly preposterous to imagine that all these judges can carry all these cases in their minds and give a clear and equitable decision promptly at the reassembling of the Court; they must take the papers and go all over it again and refresh their minds." I have no doubt that eminent lawyer was exactly right in this and you can see how it applies to the case of the Riparian Commissioners, cases, hundreds of them, year after year, with varying circumstances and conditions; how is it possible for me to say that this price of $43 was made—why it was made and why another was made $60, and another $87? I cannot do it.

That is my answer, Mr. Attorney-General.

Q. Well, now— A. Just one more word. The only way in which a clear and equitable understanding of the reasons that actuated the Board at that time could be had would be to have these witnesses, the lawyers and engineers, and the data that was presented to us presented here before this Committee. I cannot present it; I cannot recall it; I can only point you to the records and say that we did the very best that we could, so far as I was concerned at least, under the circumstances that confronted us. I made the price—so far as I was concerned—and I did not always agree with my colleagues, sometimes they would think that we should make a higher price and sometimes they would think that we should make a lower one, but we always all agreed to accept the concensus of the views of the Board and I do not recall a single instance where a member of the Board refused to sign a grant or lease on the ground that he differed from his associates as to the price. We made the price under the circumstances and conditions

and facts which confronted us to the very best of our judgment, for the interest of the State.

MR. DUFFIELD.—The Attorney-General has asked me to continue this examination, as he has been called away temporarily, in order that time may not be lost.

BY MR. DUFFIELD.

Q. I understood you to say that an examination was made by the Board, very often, of property ; can you tell us how often the entire Board has visited any of the lands leased, since you have been on the Board? A. Yes, Mr. Attorney-General, I will be pleased to tell you. The Board, mind you, in the course of years has become very familiar with the principal water fronts in the State where applications are made. We have been to Atlantic City, we have been to Ocean City, we have been to Harvey Cedars, we have been to Seaside Park ; we have been all up and down the Hackensack and Passaic and Newark Bay and up the Hudson, carefully inspected every foot of it, several times ; we have been through the Kills ; I do not recall that we ever went up the Raritan river, but we have inspected these fronts, Mr. Attorney-General, so that when a case comes up now I am pretty familiar with the conditions surrounding the grant applied for.

Q. That being so, why is it then impossible for you to throw a little more light on the matter which the Attorney-General suggested ; if you are familiar with the conditions which exist in these various places why cannot you explain to this Committee the great variation in prices? A. When an application is made for a very large grant, involving a large amount of money, notwithstanding our familiarity with the general character of the stream or water front, we go and look at it. There were a number of applications up along the Hudson river during the past year.

Q. Yes? A. They were applications for very valuable tracts. Notwithstanding our general knowledge of the situation we thought it wise to go and examine the individual cases, which we did, in a boat; and so in other cases we went up across the ferry and took conveyances and went down along the river. And that is our custom where an application is made for a very large or important grant, we do not depend upon our general knowledge of the situation.

But my general answer was in reply to your question as to how much we investigated these places ; generally, I will say that we have a pretty generally good knowledge of the situation in all—where the most important riparian interests of the State are ; yet,

notwithstanding that, when an application is made for a very valuable grant, we think it wise to go and look at that particular one.

Q. The point that I was endeavoring to make was this : you say you have a general knowledge acquired by long connection with the Board and work in going around and inspecting riparian lands? A. Yes, sir.

Q. So that when an application is made you are familiar with the general character of the land concerned? A. Yes, sir.

Q. Now, you say that in recent years where an important application is made, you have gone around in order to further familiarize yourself with the land. Now, I say, under those circumstances, cannot you give us a little more light as to the great variation in these prices ; you are familiar with the land and you have refreshed your memory on the Hudson river within recent years? A. Yes, sir.

Q. Now, I say, is your only answer that there are such varying conditions there that it is impossible for you to say why the great variation in prices exists? A. Yes, sir ; I imagine it is impossible for me to say at this time, to tell the reasons why we made the price here varying five dollars from the price here. It may be that in front of one there were physical conditions that did not exist in front of another.

Q. By an examination of the map and with your familiarity with the land cannot you tell what those physical conditions are? A. No ; I do not think I could. I will tell you the general knowledge of the character of these different water fronts relates to the general character of the prices that we asked for them. Now we know, when anybody makes an application for a grant along the Hudson river, that means a big price ; we are familiar enough with the situation up there to know that that means a big price ; we know it means from sixty dollars to two hundred dollars a foot ; when an application is made on Newark bay, we know that on one side it means about so much and up the Passaic river it means about so much and up the Hackensack about so much and down at—take some stretches of wild and worthless land in South Jersey, and there we know it means a few cents a foot, and in other cases hundreds of dollars. We generally know that. That is not specific knowledge ; that is general knowledge of the general character of the situation which has grown up from year to year in the minds of the members of the Board, so that a man who would come in there as a new member would need to be informed generally as to the general character and the price and the general character of the land ; but as to a specific case where application is made for a grant

and which involves a great deal of money, we look into it individually.

Q. Let us take up—one particular grant which you may recall made to the Cheeseborough Manufacturing Company, the vaseline manufacturers down the Raritan river ; do you remember that grant ? A. To whom ?

Q. The Cheeseborough Manufacturing Company ; do you remember that grant made on the Raritan river that one of the Committee asked about at the last session ? A. I heard that asked about and I presume we made the grant but I don't remember about it.

Q. You do not recall the circumstances of it at all ? A. No ; you see when these leases or grants are made, as far as I am concerned they are dismissed from my mind, a closed incident.

Q. I understand you to say as a general proposition that lands lying along a certain stream have a certain value ? A. Yes, sir.

Q. That is, you know there is a certain value on the Hudson ? A. Yes, sir.

Q. And pretty much all the lands which the Attorney-General interrogated you about are on the Hudson, are they not ? A. Most of these ?

Q. Yes. A. Yes, sir.

Q. Don't you think that where a grant is made at so much a foot and right adjoining it a grant is made at a very much higher or lower price per foot the reason for it would impress itself on your mind ? A. Well, it would seem on the face of it that there must be a discrepancy, but with the inability to recall the facts and circumstances that led us to that conclusion I am entirely unable to say that our conclusion was not sound.

BY THE ATTORNEY-GENERAL.

Q. Now, turning from that subject, Mr. Cloke, have you ever visited the Shrewsbury river or any part of it, say from Sandy Hook up to beyond Seabright for the purpose of apprising yourself as to the character of that river and the upland in connection with it ? A. Shrewsbury river—is that on the map, Mr. Payne ?

MR. PAYNE :—Yes ; I will show you it.

WITNESS.—We went around there a good deal.

Q. Is it or not true that the river commences at or near Sandy Hook at a distance of in the neighborhood of twenty miles from New York, that the river shifts ?

(At this point Mr. Payne produces a map and exhibits same to the witness.)

A. (continuing)—has little commercial value, no boat drawing more than certainly four feet of water can go much distance up it,

or certainly near its banks and its use is practically confined to small pleasure boats, row boats and no other kind, with the exception of the Patten line of steamers that ply between Long Branch and New York, in other words for commercial purposes, New York and Red Bank, don't they go to.

Q. No; that is another line—two lines, the Patten line running up the South Shrewsbury and the other line, the Seabird, running up the North Shrewsbury. A. I could not give you any information on that point that would be of much value; I think I went there once and looked at that situation in reference to an application, but some of the other members of the Board have been there a good deal oftener and so has Mr. Payne, and they are familiar with those conditions and I am not, Mr. Attorney-General.

Q. Have you enough familiarity with the Shrewsbury to be able to say that comparing it with the Delaware opposite Camden, the Shrewsbury is very shallow, practically useless for commercial purposes, shifting in its nature, twenty-four miles from New York at its mouth, and that normally those characteristics would not make its grants as valuable as those on the Delaware opposite Camden where the river is a mile across, having very deep water and being used for manufacturing and commercial purposes? A. Well, of course, Camden front would be worth a good deal more.

Q. That would seem to be the normal situation? A. Yes, sir.

Q. That is true of the— A. I think we get two dollars a foot down there in that section you are referring to, down there by the Shrewsbury, and over in Camden we get about ten or fifteen dollars, I think.

Q. The fact that the Delaware front is very much more valuable as you say, arises from the fact of its propinquity to Philadelphia and its great depth and its usability for commercial purposes, among other things? A. Of course.

Q. Is it not a fact that grants have been made along the Shrewsbury at about two dollars a foot? A. I think so.

Q. Is it not a fact that grants have been made along the Delaware at two dollars, three dollars and three-fifty a foot, up to five dollars? A. Well, I heard your interrogatory and Mr. Fisk's answer the other day; I am familiar with that situation.

Q. Yes; you remember? A. Yes, sir; those grants made inside of Petty Island, south of Fisher's Point, all along in there?

Q. Yes. A. Well now, Mr. Attorney-General, I am obliged to say to you that in my judgment the State got every dollar those lands were worth, from my knowledge of the situation; I have known the situation for some forty years; when the old fish house station

was there on the Pennsylvania railroad, it was a far more lively place than it is now.

Q. Let me call your attention to the grant in question : here (indicating on map) is the Delaware river, there is Petty Island, Philadelphia is here and Camden is here ? A. Yes, Camden county that is.

Q. Camden county ? A. Yes, sir.

Q. Opposite Philadelphia ? A. Yes, sir.

Q. And now you observe that this map, having a scale of 200 feet to the inch, the southernmost grant is about 600 feet north of the northernmost point of Petty Island ? A. Yes, sir.

Q. So that it is hardly accurate to describe that land as being behind Petty Island ? A. No, it is behind the dyke.

Q. And the dyke comes right out to high water, does it not? A. Well, I don't know.

Q. Where there is a depth of several hundred feet ? A. What ?

Q. Where there is a depth of several hundred feet—not several hundred feet, I don't mean that, but a great depth. A. No; I thought you were getting a little bit in deep water !

Q. Yes ; but it is deep water. A. Well, outside of the dyke.

Q. Yes. A. Oh, I suppose so ; I don't know.

Q. It is deep water there, the channel of the river ? A. Well ?

Q. What I want to know is this, it appears in evidence already that these grants were made, one as recently as 1900 ? A. Well ?

Q. No, perhaps I am mistaken about that—1905—about that time ; within ten years and they seem to have been at from two-fifty to three-fifty a foot, or, as Mr. Fisk represented it, from two-fifty to five dollars a foot. If you got two dollars or so down on the miserable shallow Shrewsbury river, near which I live, and that is the reason I call it miserable, how do you account for the Board granting these valuable tracts opposite Philadelphia at about the same rate ? I cannot understand that and I would be glad to be made right. A. Well, Mr. Attorney General, as I said before, I think the State got all it was worth. This land in here, this water in here is a dead end ; there is no commercial activity here at all ; there is an old brickyard here (indicating on map) ; I have been there a good many times and they had some old schooners they used to sail out with and I think they gave it up because the water got to be so shallow. That is according to my recollection, I am not positive about that—it shallows up. This dyke built by the government goes out here (indicating) and this is a dead end and the river is so full of sediment that it naturally settles and it shallows up all the time ; there is no commercial development there about this land.

There is no demand for it and if it was valuable, at those prices they would be after it.

Q. Is it not true that the American Dredging Company and other enterprises are right there in that locality? A. I think so; I think they are using some of that land they acquired from the State as a dumping ground.

Q. And does not this map that I hold in my hand, the United States Coast Survey, indicate that this very property is right out to the channel, these grants are right out to the channel opposite Philadelphia, away out from Petty Island? A. I understood when these grants were made—

Q. What is your answer? A. I understood when these grants were made out to the dyke that they practically conveyed nothing; that they could not use the government dyke nor go over it. That is my recollection.

Q. Is that now your explanation for making the grants at a small figure? A. My explanation is, as I said before, that the land in there, the land under water, is not of any value; it is shallow and getting shallower all the time; there is a deposit of sediment that is filling it up.

Q. You observe from this government map that the depths given here are all the way from eight feet to sixteen and seventeen feet and going out to twenty and thirty feet in the channel, right abutting on these grants? A. Out on the river?

Q. Yes. A. Oh, yes; there is good water out in the river.

Q. And is not this the main ship channel of this river, out to the edge of which these grants go? A. Mr. Payne can answer those questions. I am not an engineer; I only say this, that we took into consideration the fact that that was all shallow water, that you had to go out a great many feet to get any depth at all, and it was constantly shallowing, filling up with sediment and there was no commercial value there and no demand for that land, and we thought it was a good thing for the State to get what it did for it. I doubt if there will be any more applications in a long time there.

Q. Do I understand that you have never been down to the Shrewsbury river but once? A. I do not recall any more than once.

Q. There have been a great many grants made down there in which you concurred? A. Yes, sir. Our engineer went down there several times and we relied very much upon his knowledge of the situation and there was a committee went down. I didn't go with it. Mr. Farrel and some of the others went down there.

Q. When was the occasion that you went? A. Well, it was—I do not recall; it was some years ago.

Q. Do you know at whose solicitation, or touching what grants you went? A. I think it was some woman had an application there.

Q. I see Alice C. Strong, May 1st, 1902; was that the case? A. Possibly. I could not say if that was the case or not, but I did visit there once.

Q. You visited the place? A. Yes, sir.

Q. Wherever you did go? A. Yes, sir; maybe I have been there twice.

Q. I happen to know the Strong place; it is a very fine country summer residence, is it not? A. The Strong place?

Q. Yes. A. Oh, yes, a beautiful place. That was Mr. Strong.

Q. Mr. Strong? A. Yes, sir.

Q. I happened to speak of that because I see "Alice C. Strong" here. A. Well, she may be the owner of the fee. I don't know.

Q. There seems to have been a grant made around her property and also around an island in front of her property? A. Yes, sir.

Q. Is that the case you had in mind? A. No, sir. If I could ask Mr. Payne.

THE ATTORNEY-GENERAL.—All right.

WITNESS.—Mr. Payne, what occasion was that when I went down there—some woman?

MR. PAYNE.—It was Alice C. Strong.

WITNESS.—But before that, we went down, don't you know on the Shrewsbury—there was a woman in it.

MR. PAYNE.—Yes; there was a woman in it, I remember, who treated to ginger ale and you said it was pretty poor. I remember that.

WITNESS.—I thought she was the owner of the property.

MR. PAYNE.—No, that was a five dollar piece at the Highlands, right at the bend; that this is where you went down with Mr. Holt, now, that the Attorney-General speaks of.

WITNESS.—I am not very familiar with this.

Q. The Strong place? A. Yes.

Q. But you remember it now? A. I do.

Q. You fix the locality? A. Yes, sir.

Q. And a grant was afterward made? A. I think so.

Q. You recall the fact that that Strong place, with which I am very familiar, is a large handsome summer residence? A. A very attractive place. I wish I had it myself.

Q. Yes, very good. Now do you recall when you made that grant —you united with your associates? A. Yes, sir.

Q. In making a grant off that Strong place there at the rate of

17½ cents a foot? A. I do not remember the rate, but if it is so, it is so.

Q. There are several other grants in that neighborhood—I will call your attention to the Borden grant up at Little Silver Point at $2 a foot? A. Yes.

Q. The Yacht Club—no, Navarro? A. Yes.

Q. There are several grants around here (indicating) where they have been at $2 a foot, and below here where the poor fishermen who have to make a living on the river and have to have little huts along the shore pay two dollars a foot? A. Yes.

Q. Won't you explain to this Committee how you reconcile the action of this Board in making the grant to Mr. Strong who had his beautiful country seat there and was apparently enjoying the leisure season, at seventeen and a half cents a foot and you charged the other people, including these poor fishermen, two dollars a foot? A. Yes.

Q. The same river and generally the same locality? A. Yes, I will; as well as I can. These people were troubled—now as I told you before I cannot recall the circumstances that induced us to arrive at a conclusion, I can only approximate, I can give you what seems to be the most reasonable explanation. These people were on navigable water. Mr. Strong wanted to protect his property against the intrusions of certain lawless characters who came offensively intruding upon his domain; he did not want it for commercial purposes; it could not be utilized for commercial purposes as I recollect. It is a long strip around shallow waters, away around here (indicating) thousands of feet, I think, there were altogether, remote from the channel, remote from any navigable water at all; simply for the purpose of securing the right to protect his beautiful estate from the intrusions of a lot of hoodlums, without acquiring any navigable water for commercial or any other such purposes at all. That is as I recollect it.

Q. I understand that. A. These people here (indicating) are on good water. It makes no difference whether they are poor fishermen or rich fishermen, if they are buying from the State of New Jersey we do not discriminate whether they are rich or poor, or fishermen or blacksmiths, but they are on good water there and if they wanted it they didn't have to take it at the price we fixed; we fixed what we thought was a reasonable price.

BY SENATOR MINTURN.

Q. Was that oyster lots? A. Oh, no; I think not.

Q. Was it fishing lots, a good place to fish? A. Well, I don't know about that; what they wanted it for I do not recall at all.

THE ATTORNEY-GENERAL.—There is pretty poor fishing down there.

BY THE ATTORNEY-GENERAL.

Q. Is it not true as to what you call these good grants on the channel that after all the Shrewsbury river at its best is of a very shifting character with a channel of only three or four feet of water at the best and utterly unfitted for commercial purposes such as the Delaware river is? A. I do not think it will ever develop any such commercial activities as the Delaware has. Nevertheless there is some commerce.

Q. How do you reconcile grants made along the Shrewsbury to poor fishermen and to other people than Mr. Strong at $2 a foot and grants made on the Delaware right opposite Philadelphia at about the same rate and about the same time? A. Well, my knowlege of the situation, as I told you before, I can only reiterate that that land under water behind that island—behind that dyke, is unfit for commercial purposes and I do not think that anybody who considered the circumstances there intelligently and equitably could ask any more for it; anyway they are not willing to pay any more and I think every dollar the state got out of it is so many dollars gained; that is a dead end and if the state holds it without disposing of it it will be filled up.

BY ASSEMBLYMAN BARBER.

Q. Has that land along the Delaware been used for any purpose by those who purchased it? A. I do not know.

THE ATTORNEY-GENERAL.—I understand it appears in evidence and I thought Mr. Cloke said that the American Dredging Company—

WITNESS.—They are using it for a dumping ground. I have a vague idea they are using it for that, but I did not say that positively.

BY THE ATTORNEY-GENERAL.

Q. If you look at this other Government map showing the depth of water, you will find that the river is very shallow— A. Which river?

Q. The Shrewsbury. A. Oh, there is pretty good water there.

Q. Look at this in here (indicating on map) one foot, two feet, half a foot. A. That is the river, is it?

Q. This is in the bay. Now I call your attention to the fact, as appears by this map, in the Shrewsbury river in the neighborhood of the Atlantic Highlands and the Navesink Park and other places where grants have been made to, what I have called for the purpose of definition "poor fishermen" at $2 a foot, the depth is very

slight, not more than two or three feet and the channel is a distance of several feet, fifty or sixty feet from the property? A. Yes, sir.

MR. PAYNE.—It is about 3,000 feet away, clear across the river, on the other side of the bay.

Q. Three thousand feet, yes. You observe they were not near the channel at all and only had a depth of three or four feet. A. There (indicating on map) is seven and a half feet, and there is five feet, and there again is five feet and there is four.

Q. We are talking about the location now where these particular grants were made? A. Yes, sir.

Q. And it was very shallow and not near the channel, that is the point I make, and not comparable with the ten to thirty feet in depth near the dyke you have spoken of at Camden.

Now I want to turn to the Goetschius grant. Do you remember the application that John M. Goetschius made to the Board? A. I have heard a great deal about it and I suppose I recall it.

Q. The records of the Riparian Commission show that you were present when the matter was considered and present when the grant was made? A. Yes, sir.

Q. Have you any personal recollection about it at all? A. I cannot say that I have, Mr. Attorney-General. I am afraid that I would mix up my thoughts about it with what I have heard in the testimony. I am familiar with the facts that have been adverted to here and you can ask me anything about it.

Q. Of course it does not illustrate anything to bring out facts that have been brought out heretofore in the testimony and I shall not bother you so much about it if you say you cannot remember. I want to see if you cannot recall the fact that Mr. Jackson first and afterwards a lawyer by the name of Babbitt applied to the Board for a grant of land on the Hudson River on behalf of a man named Goetschius, setting up a Legislative grant known as the Annette grant and that after full consideration and a legal opinion by the attorney of the Board you signed a grant for fifty dollars to him. A. Yes.

Q. For a stretch of water front on a very valuable part of the Hudson river. You now recall that? A. I recall that, I think.

Q. Can you recall what induced you to acquiesce in that? A. Yes, sir.

Q. What was it? A. The opinion of our counsel.

Q. Do you recall whether or not it was the custom of the Board from time to time to refer important legal questions to the then

attorney-general? A. Well, usually on the suggestion of the counsel of the Board.

Q. Yes? A. If he would suggest, or if we should suggest to him, that we ask the opinion of the Attorney-General in addition to his own and he should confirm it, as he generally would I think, we would refer it to the Attorney-General.

Q. Then inasmuch as it already appears that no opinion of the Attorney-General was had in this case the probability is that you can recall that no such suggestion came from Mr. Record, the counsel of the Board, at that time? A. Oh, of course not; I should assume that to be so.

Q. Yes. A. Now, in addition, Mr. Attorney-General, the laymen of the Board depended for their law, of course, upon the counsel who was appointed by the state and paid by the state, to give the law and we did not look any further in discussing the matter. Sometimes it would seem, if the counsel thought the questions were so knotty that he could not solve them, and they were so important, he would suggest, or some member of the Board would suggest, that it be referred to the Attorney-General. In addition to the counsel of the Board, we had a very excellent lawyer, Mr. Fisk, who was vice president and I never looked beyond, so far as I was concerned, for legal advice, the suggestions that were made by—the advice that was given us by these two gentlemen.

Q. You say you relied upon the opinion of the counsel of the Board, and I think you were perfectly justified in doing so, I want to say. A. Yes, thank you.

Q. I cannot see how you could do otherwise. A. It would be rather a reflection on him, I always thought, if we should go over his head and ask the Attorney-General to give an opinion; if he was not fit for the place he ought to have been replaced; but we relied on him; he was appointed for that purpose and paid for that purpose.

Q. The counsel of the Board did not tell you, in considering this matter, that he had written to the Honorable William M. Johnson, the counsel for Mr. Goetschius, to this effect: "The fact is that these old grants of the Legislature were very carelessly drawn and it is almost impossible to state what they mean; none of them have ever been interpreted by the courts and I should be in grave doubt as to what interpretation they would put upon these grants if the same were involved in litigation"; he could not ever haveld to you that that was an opinion he had expressed to Mr. Johnson?

A. I think not.

Q. If so, you would have been very apt to say, "Mr. Record, don't

you think you had better get the Attorney-General's advice on that subject?" A. Why, undoubtedly.

Q. Do you recall the application of the Guffey Petroleum Company for a grant down near Bayonne more recently, also claiming under a Legislative grant? A. Yes, sir; I do.

Q. I think Mr. Lindabury was their counsel? A. He was.

Q. Do you recall the fact that there was an opinion of the Attorney-General there? A. Yes.

Q. Can you give any reason from your recollection why in the one case, the Guffey case, where there was a Legislative grant the Attorney-General was consulted and in the other case he was not? A. I cannot. As I say, I did not keep track as a layman member of the Board, did not attempt to keep track of, or master, the legal questions relating to the administration; for those I depended entirely upon our counsel.

Q. Do you recall the fact that in view of the opinion of the Attorney-General in the Guffey matter, your board declined to make a confirmatory grant? A. Yes.

Q. ——in that case, with the result that the State received some $27,000? A. I do; I recall it with great satisfaction.

Q. I think, Mr. Cloke, this Committee can almost take judicial knowledge of the fact that you are, in addition to being the Riparian Commissioner, or one of them, a correspondent of the New York Herald; that is a fact, is it not? A. Yes.

Q. You, in some of your letters recently have given some attention to the matters that have been under consideration by this Committee and I refer you now to the New York Herald of Sunday, August 19, 1906; I find in that an article signed "Trenton" which I assume you wrote (handing newspaper to witness who perused same). A. Yes, sir.

Q. I observe that among other statements in the article you, in reference to the matter that is known as the Edgewater and Fort Lee application, say that you did not regard the State as giving any title or rights by that license? A. Well, irrespective of that, if you will put the direct question to me of what I think about it, I can only answer that I am not a lawyer, Mr. Attorney-General, and I would defer to your superior knowledge on that subject. I can only say this that the reasons why we made that license were these —it was not a grant; it was a license. It was represented to the Board—I don't think you ought to refer to that writing at all, just question me directly on this instance and I will answer you; what I may have written at one time, before the case developed as it has now, would be very much modified by my opinion today.

I can say this in regard to that license. The representations made to the Board, as I recollect it, were these : That this company—this railroad company—was very much needed up in that section, that they had no access—there was no access to that part of the shore front except by water. By reason of the fact that a high bluff, an escarpment bounded the river a few hundred feet back and they could only get access there by a bad wagon road and by a very steep incline when they come to it. The people owning the property all along there, the riparian owners as they are called, the owners of the upland, were represented to the Board as being very anxious to have this road built, and I guess that is so; anyhow that was represented to us. It was said that the State conveyed nothing. These were the representations made to us, that the State conveyed nothing; it was a mere formal license without conveying any real property rights ; that we could not—that the Riparian Commissioners could not grant away any substantial right of the riparian owners by any process whatever, license or anything else, without giving them their—without recognizing their right of six months' option and therefore we did not grant anything, it was urged ; and the riparian owners, it was further said, were favorable to it ; they wanted it. There was some question in the Board as to this, but those fears were satisfied and it was said that there was no legal validity in the license. Whether that is so or not is for the courts and the lawyers to decide ; we took it for granted that it was so and we made a price of fifteen hundred dollars which it was said was simply so much gained to the State, that we granted, we parted with —nothing ; that the riparian rights were still there and more valuable than they were before. They said, by building this railroad up here it brought this land into the market and that it would bring enterprises, manufacturing establishments and things like that up there, and open up the place and bring these lands into the market and make them valuable. These representations were made to us and they seemed to me controlling and on those grounds I voted for the license. Now, whether, as a matter of fact, that is so or not, is for the courts and the lawyers to decide ; I don't know.

Q. I notice you said you made a price of fifteen hundred dollars ; the fact is you accepted the price that the applicant made of $500 an acre; do you recall that ? A. I do not recall ; the price was arrived at. I think there was some figuring by Mr. Payne and the others and we evolved a scheme which made it about so much.

Q. Do you remember that it already appears in the record that the application of the Edgewater and Fort Lee Railroad Company for this land states that they think a fair price would be five hun-

dred dollars an acre, which is just the price you accepted? A. Did they say so?

Q. Yes. A. I do not recall that.

Q. I will read to you from the application. "Your applicants believe that in the judgment of the Commission it is their duty to make some charge for the license; five hundred dollars per acre would be all that they would be called upon to charge in the case of a grant in this locality, carrying with it all the rights and uses of commercial water front property"; so that apparently you adopted the suggestion of the applicant? A. Yes; it seems so.

Q. Were you accustomed to adopt the suggestion of the applicant as to the value to be put upon the land? A. Oh, no; but in this case it seemed to me that since we were parting with nothing, since we were parting with no right the state held in this land, it was a pretty good thing to do, to get $1,500 for nothing. Whether the state parted with anything is a matter for the courts to decide.

BY SENATOR MINTURN.

Q. Did you take any legal advice as to the legal value of the grant? A. Of the license?

Q. Yes. A. Well, our counsel of course was the only legal advice we had. I don't think we referred it to the Attorney-General; did we?

THE ATTORNEY-GENERAL.—I think not; no.

Q. You did discuss the legal effects of the license at that time? A. Yes; we discussed it there with Mr. Fisk and Mr. Record and the conclusion was that the legal effect was that the State parted with nothing.

BY THE ATTORNEY-GENERAL.

Q. Then your view that you now entertain and, as I understand it, entertained on the 19th of August last, was that this license was not regarded, when it was issued, as parting with any of the State's interests? A. Yes, sir.

Q. And that was the way you were advised? A. Yes, sir.

Q. By your counsel? A. Yes, sir.

BY SENATOR WAKELEE.

Q. You based that opinion on counsel's advice? A. On the advice that was submitted to us of course; we had no other.

BY SENATOR MINTURN.

Q. Who represented the railroad on that proposition? A. I don't remember; was it Mr. Brownell?

THE ATTORNEY-GENERAL.—It was Mr. Babbitt.

WITNESS.—Oh, Babbitt, was it? I did not recall.

THE ATTORNEY-GENERAL.—The same man who represented Mr. Goetschius.

WITNESS.—Oh, he seemed to have—(interrupted)

BY SENATOR MINTURN.

Q. Did it not occur to the Board as peculiar that a grant which in the estimation of the Board had no value, should be purchased by this applicant for fifteen hundred dollars? A. There was some explanation made of that, Senator, which I cannot distinctly recall, but my impression is that it was said that the railroad company simply wanted a basis for negotiations with the riparian owners, and then the argument was made before the board that when they came to secure—when the riparian owners came to secure their lands under water, whenever they applied for them, we would be in a position to charge them a good deal more because of the increased value put upon it by the construction of the railroad. Now, as to the exact legal effect, that, as a layman, I did not inquire into very closely because we had our counsel, and we had, as I said, a distinguished lawyer on the Board. But, without betraying any confidence of any member of the Board I will say there was some kicking against making this lease without first consulting the owners of the upland, and it was said then that this was utterly useless anyway, because the riparian owners either assented to it or it was not any of their business; or anyhow, answers were made which if they did not entirely satisfy, quieted those apprehensions.

BY THE ATTORNEY-GENERAL.

Q. Do you remember who it was said the thing was a useless thing and did not amount to the paper it was written on, and the State was picking up fifteen hundred dollars? A. No; I do not.

Q. Did you consider that you were giving to the railroad company the right to construct, maintain and operate a railroad as far as the State could give it—you knew that; didn't you? A. I knew we were giving them a license to construct a road; yes.

Q. I want to take your mind away from any developments in this investigation, and I realize how difficult it is to go back; but see if you cannot go back to the time and recall if anything was said about a similar license which had been given to the Navesink Railroad down at Atlantic Highlands? A. I do not think it was mentioned.

Q. You do not think it was mentioned? A. Not, as far as I can recall.

Q. Did it occur to anyone and was any suggestion made by anyone at that time that in view of this novel proposition, so far as you can remember it, the Attorney-General's advice should be

sought rather than relying wholly on the advice of your counsel when you were getting from a railroad that does not ordinarily give away fifteen hundred dollars for nothing; fifteen hundred dollars for nothing? A. I do not.

Q. Did anyone explain to you why the railroad company was hiring Mr. Babbitt to come before you and getting P. Sandford Ross and a lot of other prominent citizens to come there and advocate the granting of this license and volunteered to pay fifteen hundred dollars if they were not getting anything, if it was a mere perfunctory performance that did not amount to anything; did anyone explain that to you? A. No, except this—(witness paused)

Q. Have you any objection? This is a Legislative inquiry and I think it is fair to ask you to state who, what you have designated as the kickers were, on that first occasion? A. I prefer not to.

Q. Is it not a fact that modesty forbids? A. Why do you want to penetrate into that question so deeply?

Q. Well, you did kick for a while, didn't you? A. Well, I did kick, yes; of course I did.

Q. But you were overcome by the suggestions of some of your brethren? A. I was persuaded it was all right. I signed the lease.

Q. May I ask you to go one step further and tell me if it is not true that one of the persuaders was Mr. Fisk? A. Is that necessary to the elucidation of the issues of this case?

Q. Well, I am trying to get at the exact fact lying around that situation. A. Well, I think Mr. Fisk advanced the arguments that I have stated to be the reasons why we made the lease.

Q. And do you recall that both Mr. Fisk and Mr. Record endeavored to overcome your scruples and hesitancy by the statement —both being lawyers and one of them described by you as a distinguished one—that the state surrendered absolutely nothing by such a paper? A. Well, the arguments by which we made the grant, or the lease rather—

Q. The reason? A. The reasons were those that I have stated, and they were made by Mr. Record and Mr. Fisk, possibly the counsel. I do not remember if the counsel said anything at all. I do not remember whether he addressed the Board or not. I do not recall that he said anything.

Q. Referring to page 517 of the record, then if you had understood that as long as the railroad to whom the license was given was to be operated as a railroad, which might be for 999 years, the lease would be operative as far as the state was concerned to permit the operation of a continuous railroad and the maintenance of it during that time— A. Did I understand it, do you say?

Q. Yes. A. I do not think that I considered that view of the case. The license was made for a limited period, two years I think, and what was to be done after that, I do not think we considered.

Q. The license as I recall it (I have it here) was a license to construct and build a railroad across three acres of the state's land, perpetually, or during the life of the railroad, provided it were built within two years; that was the practical effect of it as I remember. A. Oh.

Q. Now, I want to know whether or not you understood from the advice you got at that time that it was effective to the railroad company provided it complied with the time limit of two years to construct. A. Effective—

Q. As far as the state was concerned. A. As far as the state was concerned? I don't think that question was adverted to.

Q. Then I understand as a matter of fact, as you can recall the situation, to quote your own language, "This license was not regarded when it was issued as parting with any of the State's interests." I quote from your article in the New York Herald of the 19th of August. A. I was induced—the Board made the license, upon that assumption, as far as I can recall it, but whether or not that is so, I am unable at this moment to determine.

Q. Then to sum the matter up, before we go to lunch, the situation was about this, was it not—and I think your duty to the State and to yourself should be considered as well as that of your fellow Commissioners—that you and Mr. Farrell objected to this application, that Mr. Record, the counsel of the Board, and Mr. Fisk, the Vice Chairman, and also a distinguished lawyer, urged upon you both that the license was not regarded as parting with anything by the State and that you were getting practically fifteen hundred dollars for nothing and on that persuasion you acquiesced, and so did Mr. Farrell? A. That and the other considerations that were advanced, that it would improve the value of the State's holdings and that the people up there wanted it.

Q. You thought that as long as you were giving nothing, at least you were getting fifteen hundred dollars? A. Yes, sir.

Q. And it was claimed you were going to benefit the rest of the property, including this, and that it was a good thing to do? A. Yes.

Q. And you did it? A. Precisely.

THE ATTORNEY-GENERAL.—It may be important for the Committee, before we adjourn, to recall the fact that on page 517 of the record it appears that Mr. Fisk now states that he thinks the legal effect of that paper was undoubtedly operative as against the

State, that it granted and conveyed any right that the State had in the property itself.

SENATOR MINTURN.—Whose opinion is that?

THE ATTORNEY-GENERAL.—Mr. Fisk's, in his testimony, at page 517.

A recess was then taken.

After recess.

WILLIAM CLOKE resumes the stand. Examination continued by the Attorney-General.

Q. Mr. Cloke, it already appears in evidence, and I will refresh your memory by stating, that a concern known as the Water Front Improvement Company presented, in 1902, to the Board, Mr. Holt in the chair—an application for a grant which at a meeting, at which I think you were present, was acquiesced in and the figure fixed at $75 a front foot. This was on the Hudson up near the same location we have been talking about. It further appears that at the next meeting, the Board, without any reason stated in the minutes, reduced the figure from seventy-five dollars to sixty dollars. Are you able to give the Committee any explanation why the grant was first determined upon at the rate of $75, and then reduced at the next meeting to the rate of $60? A. I cannot recall. It frequently happened in the consideration of cases that on further testimony and fuller consideration, on appeal from the grantee, we were induced to make a reduction in the price first fixed upon. They would produce some facts and arguments of a character that seemed to us convincing why we should make the reduction; what those reasons were in this case I cannot recall, but I presume that they presented some reasons that had weight with the commission or they would not have made the reduction.

Q. I do not suppose the fact that the President of the Water Front Improvement Company, Walter L. McDermott, the partner of Mr. Fisk, was one of those inducements, was it? A. Not that I know of. I don't know that he appeared in the matter or not.

Q. I see his name as President; do you recall the Water Front Improvement Company grant? A. I do not.

Q. The name "Water Front Improvement Company" makes no impression upon your mind? A. No; only vaguely as a name, among the parties who have had dealings with the Board.

Q. If the Board fixed at one meeting upon a price, say $75. I suppose, to use a slang expression, the Board would "stand pat,"

unless some good reason would appear for reducing it afterwards. A. Unless some good reason—

Q. Yes. A. Yes, sir.

Q. And you cannot recall any reason why that deduction was made? A. I cannot.

Q. Do you remember that in that case, as in one or two others, while Mr. Fisk was connected with the Board, he stated his interest in the application and therefore asked to be excused from voting? A. I know he did that in some cases; whether this was one of them or not I cannot recall.

Q. Don't you remember that in one or two cases, and possibly this one, notwithstanding the fact that he did, very properly, as the record shows, ask to be excused from voting, he personally advocated the granting of the request? A. I cannot say as to that.

Q. What I am driving at is this, Mr. Cloke, to be candid, I myself feel—I do not know how the Committee will feel or how you will feel—that the State, when it pays commissioners $1,500 a year for their services, is entitled to their unbiased judgment upon each matter and it does not seem to me that a man who is a commissioner should, although he technically refrains from voting, nevertheless actively promote the advocacy of a grant, in which he is interested, before the Board; in other words, do you feel so—I don't think you have ever done so? A. No.

Q. Do you not think that the State when it has four commissioners is entitled to have four people's judgment about a grant? A. Well, that is the natural presumption about a grant, of course.

Q. Can you recall in any instance where Commissioners, although they technically refrained from voting, so that there were but three votes, did advocate the granting of applications for less than the regular figure, such as was fixed in the Water Front Improvement case? A. Do I recall any instance?

Q. Yes. A. No.

Q. Did you know at the time the Water Front Improvement Company grant was made that Mr. Fisk was interested in it prior to the time that he asked to be excused from voting? A. I do not think I did.

Q. Up to that moment, no one, I imagine, knew of that fact? A. I think no member of the Board knew it.

Q. Referring to the map, it seems to be number four; you see there is a deep upland before you get to the road, the highway, and an exterior line of considerable extent? A. Yes, sir.

Q. Looking at the property, bearing in mind that it lies between the grant to J. P. Martin and to the Transit Company, is there

anything about it that you can now recall that was effective upon your mind, within a month after having fixed the grant at seventy-five dollars, to change it to sixty dollars? A. No, sir; I cannot; I suppose the presumption is that they presented some argument that had weight with the Commission; what it was I do not recall.

Q. I think while I was temporarily out of the room this morning you stated, at least I heard you did, that you felt the Board was entirely justified in making rebates for prices provided a beneficial manufacturing enterprise could be thereby obtained and ventured the opinion that you did not look upon this feature of the school fund as being so valuable as certain people seemed to think; did you make the statement? A. Today?

Q. I understood you did; somebody said so as I came in. A. No; but I said something on that line before, two or three weeks ago.

Q. You have always advocated as I understand it the propriety of reducing the price that the Board had originally fixed provided the grantee would promise to come there and build? A. Well—

Q. Or develop an enterprise? A. If the grantee proposed to locate a plant that would be markedly beneficial to the municipality and the state, that is to say, would invest a large amount of money there and employ a great many people and lead to the building of a good many homes and all that kind of thing, and lead to that kind of development, I felt it was the policy of the state of New Jersey to lure that kind of concern into the state.

Would you object to my reading a paragraph I saw in the paper today?

Q. Not at all. A. This is from the Paterson News:

"New Jersey is rapidly winning away from Brooklyn and Long Island a large proportion of its most important manufacturing plants, according to Comptroller Herman A. Metz of New York. Mr. Metz is a resident of Brooklyn and on Wednesday addressed the convention of the Long Island Real Estate Dealers, pointing out to them the danger of losing their principal industries. Indirectly he paid a fine tribute to the advantages of New Jersey and to the enterprise of the State's cities, and industrial organizations. Referring to the establishment of industrial enterprises on Long Island, Mr. Metz said, in part, the tendency now is to sand bag them."

That is on Long Island, New York.

"When you do that it means stagnation and then retrogression. Nothing is more important for Brooklyn, for Long Island, Queens in particular, than to head off the tendency of things going to New Jersey. Manufacturing is now going there. I have moved two

plants there myself. You know what that means." I saw that in the paper this morning and took it out; it illustrates the point that I made that New Jersey finds its best interest in the use of its riparian domain in using it to lure capital and enterprises and population and wealth and labor into the state.

I will set those views forth more at length in a prepared statement later in the investigation, if you see fit.

Q. With great pleasure. Then I will not pursue that now; you can have all the opportunity you like about that.

I want to direct your attention for a moment to another grant that was made about this time and about which we have already had some testimony. I refer to that made to the Morris Building Company; do you recall that at all? A. Only as it has been referred to in this investigation. I do not recall any of these instances.

Q. That is the instance where a grant was made at sixty dollars a foot but with a proviso that twenty dollars a foot should be thrown off, making the ultimate grant at forty dollars a foot? A. That is located on the Hudson?

Q. Yes—provided the concern would agree to and complete a plant thereon within a certain given period? A. Yes.

Q. And you may also have your memory refreshed by the fact that some money was put up in escrow, twenty dollars a foot was put up in escrow? A. Yes, sir.

Q. I think this was another case that Mr. Fisk did not vote in; did you know who the Morris Building Company was at that time? A. No, sir.

Q. I understood that, pursuant to your idea that it was beneficial to your manufactures and enterprises in the State, the Board in this case adopted that view and allowed $20 a foot off, provided this manufacturing enterprise should be completed.

Now, did you know at the time that was done that the Morris Building Company was a mere blind for the New York Glucose who already owned upland in the neighborhood and had grants for adjoining property and expected to build thereon this great improvement and only wanted this little extra property to complete their plans? A. I do not recall whether that fact was made known to us or not.

Q. Would that fact, if it were a fact, if made known to you, have made a difference in your view about it? A. As to the—

Q. The propriety of making this $20 per foot reduction? A. In the—

Q. Yes. The question is somewhat involved and if you will per-

mit me I will try to make it plainer. A. Yes; I am a little puzzled by the question.

Q. The papers themselves disclose an application for the Morris Building Company; disclose the fact that in the neighborhood the Board at that time was asking from sixty dollars to eighty-five dollars a foot, disclose the fact that the Morris Building Company proposes to bring a large manufacturing interest there on this property if the grant were made, and, upon that proposition, obedient to the idea you have suggested, the Board agreed to make them a grant at nominally sixty dollars a foot, but in reality at $40 a foot, if they would do that thing. It now transpires, I think, plainly by the evidence, that the Morris Building Company was a blind; that one of the commissioners was interested in it; that the real concern was the New York Glucose Company, with offices at 26 Broadway, and that that concern already owned upland adjoining and riparian rights adjoining, but thought that their property was not quite large enough for their enterprises, and so designed to enlarge their holding a little bit through the guise of the Morris Building Company, an apparently brand new concern. The best illustration I can give you of the situation is shown in the little sketch that has already been before the Committee; the three red tracts representing the holdings of the New York Glucose Company, and the uncolored tract where the word "water" appears, being the locus in quo. A. At the time this application was made for this, did this company, the Glucose Company—were they located here (indicating)?

Q. They were not actually located there, but they owned it all. A. They had not yet—

Q. —erected any buildings, as I understand it. A. Whether or not the fact of their owning the adjoining tracts was made known to the Board I am unable to say, but certainly it would have been, in my judgment, a very important fact before the Board; we ought to have known it if we did not.

Q. In other words your views coincide exactly with what I supposed you would say if you knew they already had that investment there and were committed to the ground and expected to come there anyway and only wanted this little extra bit to complete their plans, you would not have been so apt to throw off the $20 as you would have been if you thought it was a brand new enterprise? A. Of course not.

Q. And that information was not disclosed to you by Mr. Fisk or anyone who had it? A. Not that I remember.

Q. And you did not know that the Morris Building Company was

not a brand new enterprise really interested in the project? A. No.

Q. I think that the new Board of which you are now vice chairman has been getting prices as high as from seventy dollars to two hundred dollars a front foot for land on the Hudson river from Fort Lee down; am I right? A. I think so. I am not quite sure about the $200; where that was—we asked that.

Q. If you do not— A. I will say that Mr. Payne told me today at the lunch table that—I understood him to say that at the next meeting of the Board they were prepared to come in and pay that price.

Q. Yes. I am handed by Mr. Payne a letter addressed to the Commission under date of September 4, 1906, which is so important that perhaps it had better be read. A. What is the date?

Q. September 4th. "Gentlemen: Referring to my letter to you under date of March 28, last, wherein on behalf of the owners of the two plots fronting on the Hudson river at Weehawken, which on the petition map of James G. King, deceased, dated October 13, 1875, are designated by the letters E2 and Ce, I applied to you to fix a price at which you would make to such owners a grant in fee of the land under water in front of said plots, which price you subsequently fixed at $200 a foot front. I now desire on behalf of the owners of plot E2 to accept the price so fixed by you as a basis for a grant and to request that a lease of the land under water in front of said plot be made to the owners on the basis of such price," which letter is signed by Mr. King. A. A lease?

Q. Yes. "And to request that a lease of the land under water in front of said plot be made to the owners on the basis of such price." It thus appears that there has been an acceptance of a figure as high as $200 a foot? A. Yes, sir.

Q. During the present year? A. That is the highest we ever got.

Q. Being the highest figure you ever had? A. Yes, sir.

Q. Is it not true that the Board recently got a bid of $85 a foot at Pleasant Valley, where formerly the price had been $40? A. Yes; and we executed the grant.

Q. You executed the grant? A. Subject to the Governor's approval.

Q. Certainly. So that at Pleasant Valley you recently got a figure as high as $85 a foot and the Edgewater Basin Company within not a very long time ago made a proposition, which I believe was accepted, on the basis of $75 a foot for land somewhere up in that neighborhood? A. Yes, sir. I believe so.

Q. Do you realize the fact that if the Board had asked the Morris

Building Company or its alias, the New York Glucose Company, to pay $150 a foot that they would have got $50,700 for a grant which they got very much less for, and only forty dollars a foot? A. Well, that is purely a matter of conjecture. I don't know whether they would or not, but probably since they had other property there and wanted this additionally that would have been so.

Q. Can you account for the fact that while the Morris Building Company, whose characteristics I have described, got a grant for $13,520, if they had been charged fifty dollars a foot less than Mr. King has accepted a grant for the state would have gotten $50,700 instead of $15,520? A. Of course they would.

Q. Do you think there has been that increase in the value of the property in the meantime? A. That is an open question; so far as it is controlled by demand and supply I should say that there has been of late a very large increase in the demand; the supply has got smaller; these sites on the Hudson are very valuable, and in demand and I should think therefore that the increase of price, as seen there are—well logical, you may say, natural.

Q. There have not been a great many grants—there were not a great many left, were there? A. No.

Q. So that you cannot account for the fact of such an advance as that as being governed by the law of supply and demand? A. Well, there has been a large number of applications, Mr. Attorney-General, within this year up there along the Hudson and there seems to be an increasing demand for these lands. I do not know whether it is on account of that railroad being projected or whether it is because of the increased demands for commercial facilities around New York, but anyhow there has been an increased demand. But at the same time I think that in the case you referred to, the Morris Building Company, if all the facts and circumstances had been known, I think a larger price would have been secured, and I think it ought to have been secured.

Q. I want to take up a little bit now, Mr. Cloke, the question of the fees that were accepted by the counsel and the secretary of the Board for alleged legal services rendered by somebody. I observe that in the article in the New York Herald of September 2nd, 1906, signed "Trenton," the following appears, and I only refer to that as apparently indicative of your view at that time, of course since this investigation commenced; the article states, "Most people who have taken interest in this investigation seem to be considerably befogged as to what was actually proven and as to the gravamen of the alleged offense in the acceptance of fees by Mr. Record in addition to his regular salary of $1,500 a year as the counsel of the Ri-

parian Commission. A little explanation will make it plain. When a person applies to the Commission for a grant or lease of riparian property he is required to produce proof that he is the owner of the upland abutting on the land under water for which he applies and also, as the instructions which he receives from the secretary recite, an abstract of the title to the land owned by the applicant prepared by a practitioner of the law of this state or by the clerk of the county in which the land is situated. The notice embodying this information was always sent to the applicant by Secretary Payne—by Mr. Record, or the counsel of the Board. It will be observed therefore that the services rendered in preparing these abstracts was not to the Riparian Commissioners but to the applicant for land under water. They had, and paid for, the services, and it made no difference to the State who the lawyer might be who was employed in performing the services, except that he must be one whose standing and character at the bar made him acceptable to the Board. The State did not pay for the work."

Now, as a matter of fact, is it not true that no work was done by Mr. Payne or by any attorney or agent of the Board in preparing an abstract, as you said in that article, but that this very rule which you referred to, being a part of the annual report, the one I use being that for 1905, provided that "Applicants for lands of the State under tide water will observe the following directions":

"Fourth, an abstract of the title to the land owned by the applicant, prepared by a practitioner of the law of this State, or by the clerk of the county in which the land is situated, must be furnished with the application before the same will be considered by the Commissioners."

Now, does it not appear on reading that rule, which I have just read to you, from your own report, that you were mistaken in the newspaper statement that the services which were rendered in response for those fees were in the preparation of abstracts, after the grants had been made, and that the abstracts had to be presented with the application and that the real service which was supposed to be rendered by the counsel in the matter was, pursuant to the resolution of the Board, examining that abstract and giving a certificate to the Board, in accordance with the resolution, that the title shown in the abstract was as purported to be by the application; was not that the true situation? A. Well, whatever the service was.

Q. Now, Mr. Cloke, a legislative inquiry is under way; don't you think that it would have been more becoming, before undertaking to describe the situation to the public through the medium of a

large New York paper, that you should have been more accurate in ascertaining the facts in regard to the situation, rather than to have stated that the fees were earned and that they were given for abstracts prepared by Mr. Record, when the fact was that the abstract was to be presented with the original application, and what Mr. Record was to do was to sign a certificate of title, based upon the truth of the statements in the abstract? A. Well, as to the matter in issue, what difference does that make, Mr. Attorney General?

Q. Only this, and I do not want to be offensive at all in any way—A. Oh, no.

Q. Only I do feel that when an investigation is going on concerning a commission of which you are a distinguished member, before you fly into the newspapers in the defense of a position that has been taken you should be more accurate concerning the facts in regard to it. A. I did not mean to fly into anybody's defence; I did undertake to state what I thought to be the facts in the case and my understanding of the matter was this, that whether you call it an abstract or whatever it may be, the papers that were prepared by these various counsel throughout the State, designated as acceptable by the Riparian Commissioners, were rendered not to the State of New Jersey but to the applicants—these services, and that when Mr. Record became counsel of the Board, if he had frankly said to the members of the Commission, "This work is being done by a variety of counsel throughout the State and I do not see any reason why I should not do it; it will be handy, I am convenient, I am familiar with the facts and why should not that be turned over to me?" I don't know that the Commission would have objected; I don't I think I should, it seems to me that would have been a very reasonable proposition. What I object to is that these representations were sent out to what I might call the patrons or clients of the State, for our riparian interests, and our rules say that these blank forms will be furnished as required by the applicant, conveying the impression, by implication at least, that no charge would be made for it; and time and again, verbally, orally, I have told men who came to me and wanted to know how to apply for grants or leases, I have told them all they had to do was to send to Mr. Payne and that he would furnish them the necessary blanks, that there would be no charge attached to it whatever, they needed no interposition of a lawyer, it was perfectly free and open to them, the State of New Jersey would give them every facility and any man, a plain business man, could make the application without cost. What I object to, what strikes me as the gravamen of the offence was that charges had been secretly made to these patrons during

all these years when we had held out to them the belief that they could get it free. As to the technical character of the services it does not seem to me to enter into the———

Q. Then I do not understand that you knew at all that any such fee was charged? A. I do not; I never dreamed of it.

Q. You had not the slightest suspicion of it? A. No, sir.

Q. You never was told of it by a soul? A. No, sir; and it was that, deceiving our patrons. Time and again men have asked me what to do and I have told them to send to Mr. Payne and he would send them all the blanks they wanted and that they did not need a lawyer and it would not cost them a cent, and all the time they were being charged according to the testimony, from fifteen to fifty dollars.

BY SENATOR MINTURN.

Q. What did you understand the duty of the counsel of the Board to be under such circumstances? A. To give legal advice, Senator. I don't know. I may be dense about this but I cannot see wherein the counsel of the Board of Riparian Commissioners, any more than any other counsel, should be required by the state of New Jersey to render services to its clients free of charge. I do not want to enter into that discussion, however, but that is my view and I cannot see where there is any impropriety in the counsel of the Board charging fees for services, not being rendered to the state, but to these applicants, that he was not required to supply. Why should he not charge them? Because we pay him for other work?

BY SENATOR WAKELEE.

Q. What were the services rendered to applicants? A. Well, they can tell you better than I. When a man applies to the Board for a grant he is required—the rule says "blank forms for application and all further information required will be furnished by John C. Payne, secretary of the Commission." Now, just exactly what the technical character of those forms was I do not know. I never examined them or had anything to do with them at all.

Q. Some of these fees were charged for making out the grants which were in the nature of deeds; how was it the applicant's duty to pay for the drawing of the deed that he was to get from the state when he was paying the state the purchase price?

BY SENATOR MINTURN:

Q. Under the Riparian act it is the duty of the commissioners to ascertain before they make a grant that the person to whom the grant is made, the grantee, is legally entitled to the grant as the owner of the upland? Q. Yes, sir.

Q. But you have to satisfy yourself of that fact by some examin-

ation of the title? A. I suppose so; that would be my supposition and I was surprised, I frankly can say I was surprised the other day when it developed, in the course of this investigation, that that required evidence had not been supplied, that it had been done so perfunctorily.

Q. Is not that one of the duties of your counsel, to see that it is supplied? A. Sure; I should think so.

BY THE ATTORNEY GENERAL:

Q. I call your attention to an entry in the minutes of the Board to a meeting held on the 27th of September, 1894, which is the year after the selection of Mr. Record as general counsel, in which the following appears: "On motion it was resolved that hereafter the certificate of the general counsel that he has examined the abstract furnished by the applicant for riparian rights be accepted by the Board as satisfactory evidence of such applicant's title." Do you recall that motion being made and passed? A. 1894?

Q. Yes. A. No sir; that was a few months after I became a member.

Q. But you observed— A. I observe that it is there.

Q. I suppose so, and that evidently it was the view of the Board when that resolution was passed that the general counsel of the Board should examine the abstract which the rule you have referred to required to be furnished by the applicant so as to see whether or not the applicant was the owner of the upland and if so to make a certificate of title which certificate was to be plenary evidence, satisfactory to the commission on that point; that is so, is it not? A. Yes, sir; it is.

Q. Did you ever see that form of the certificate gotten up for the counsel to sign (handing witness paper)? A. I never did.

Q. Is it not therefore perfectly plain that you are mistaken in the idea that any work performed by the counsel of the Board in this matter was work that he performed for the applicant, that before the applicant came there he had to have his abstract and that after he came and the Board took up the question of granting the application, it was, by a rule of the Board, made the duty of the counsel to examine the abstract and certify whether or not it was good? Now, if that is so, how was Mr. Record or any other attorney of the Board, working for anybody but for the state in the matter? That is what I want to know. A. Were the abstracts made—was that the work for which Mr. Record charged and collected the fees?

Q. The work he charged and collected the fees for, as I understand the evidence, was that after he was supposed to have made

the examination of the abstract which resolution required him to make— A. That is what he got his fees for.

SENATOR WAKELEE.—And making out the grants.

THE ATTORNEY-GENERAL.—Yes ; and making out the grants.

WITNESS.—Then I add that in addition to the gravamen of the offence as I saw it, in concealing this thing, was his exacting fees that he had no legal right to under that resolution.

Q. Did you at any time know prior to this moment that, whereas the rule required the applicant to present an abstract of title, the resolution required the counsel to examine that abstract and to make a certificate of title, that it appears by a thorough examination of the files of the commissioners during the incumbency of Mr. Record as counsel of the Board, that while there were some three hundred and eighty-two applications considered and granted, only 141 abstracts were ever furnished and only fourteen certificates of title ever signed ? A. I heard that in the testimony.

Q. If you had known it was the duty, as you seem to have forgotten, under this resolution which never appears to have been revoked, of the counsel— A. And has never been referred to either that I have heard.

Q. No—of the counsel to make an examination and sign a certificate, as part of his legal duties, knowing that the Board had in the vast majority of the cases never had any certificate and at least in half the cases never had any abstract furnished, would you have sanctioned giving the grant ? A. Would I have what ?

Q. Sanctioned making the grant. A. You mean that I would not have sanctioned the grant until the legal requirements had been complied with.

Q. Certainly, I say, if you had known. A. Why, certainly, I suppose that our counsel—

Q. Did his duty ? A. —and the secretary kept these things all straight ; we had implicit confidence in them.

Q. You would not have authorized the delivery of the papers if you had known ? A. If I had thought the legal requirements had not been complied with, certainly not.

BY SENATOR WAKELEE.

Q. And you would not have signed these grants at all? A. I should have insisted on the conditions being complied with, Senator, before I signed anything of that sort.

BY THE ATTORNEY-GENERAL.

Q. Of course, you are not a lawyer, Mr. Cloke, and are not acquainted with the legal features of this, but as a matter of fact, I will inform you that an abstract of title of any applicant referred

to in this rule is a brief of title, or a document that is supposed to indicate to a lawyer the state of the title of the applicant. A. Yes.

Q. And it is the work of a lawyer or somebody learned in the law like the county clerk? A. Just so.

Q. So that you saw by the rules of the Board, when an applicant came to the Board, he was required to furnish to the Board a legal document, an abstract of the title? A. Yes.

Q. So that a lawyer, looking at this legally prepared paper, would be able to sign a certificate as to whether or not he was entitled to his grant under the law. Now, you have evidently been confused and I am only anxious to straighten that out to you, that is all I am driving at, as to what was done. A. Yes.

Q. You now see, do you, that the fact was the applicant had to present this abstract, this legal document? A. Yes.

Q. With his application? A. Yes, sir.

Q. And then, according to the rules and the minutes and what not, the counsel of the Board was required to examine that? A. Pass upon it.

Q. And pass upon it, and tell the Board whether or not he was the legal owner so that he was entitled to a grant? A. Yes, sir.

Q. And, understanding that, you feel now quite sure that if you had known those formalities were not carried out you would not have sanctioned the proceedings? A. Sure; we would have insisted on the legal conditions being complied with. I think every member of the Board would have done so.

Q. There are annual reports of which this (handing witness a pamphlet) is one issued by the Board, and I think, since you have been actively connected with it you have had a good deal to do with the preparation of the reports, have you not? A. Yes.

Q. And you are familiar, of course, with those documents? A. Pretty familiar.

Q. Mr. Record became the counsel of the Board in 1893 and in the reports—I have not them all here but they have appeared in the evidence—priorto his appointment as general counsel used to appear the following, "The applicant or his attorney having received from the Secretary of the Commission notice of the action of the Commissioners and the price fixed for the grant or the principal sum of the lease shall within ten days notify the Secretary of the Commission of the acceptance of the term so fixed and shall pay the sum of fifty dollars on account of the expenses of the Commission in preparing the said grant or lease." That used to be in the old reports when the Board had local attorneys, which showed the

applicant was required to pay fifty dollars for work in preparing the papers, etc.? A. Yes, sir.

Q. You remember, I suppose, or are aware of the fact that the local attorneys never received any pay from the Board? A. I suppose so. I don't know.

Q. Yes. Now, after a general counsel was appointed, the local attorneys dismissed and a salary of fifteen hundred dollars a year fixed for the general counsel, do you recall the fact that the very next year's report prepared either by you or under your direction omits that provision for the payment of fifty dollars, altogether? A. In those directions?

Q. Yes. Being the fifth item. A. In the appendix?

Q. Yes. A. Oh, that is omitted?

Q. Yes. Now does not that indicate that in that respect as well as in the resolution and what not it was the purpose of the Board that the attorney should no longer get compensation for this matter, but that whereas, under the old regime where the local attorneys got no compensation from the state they were to be allowed fifty dollars for the legal work, that after counsel was employed on a salary and that rule being revoked he was to perform this duty in the regular course of his work? A. It looks so.

Q. It looks so, does it not? A. Yes.

Q. I confess I think so too. I do not know whether you were a member of the Board at the time of the Navesink license? A. No, sir.

Q. You don't know anything about that? A. Nothing.

BY SENATOR MINTURN.

Q. Were there any rules of the Board prescribing the duties of the counsel and secretary? A. No, sir; not that I knew of. I never knew of any.

BY THE ATTORNEY-GENERAL.

Q. Was there any complaint ever made to you by or on behalf of the counsel of the Board that his salary was inadequate for the legal services required of him? A. No, sir.

Q. How long after Mr. Record ceased being counsel for the Board, if you can recall, did his office continue to be in the office of the Board in Jersey City? A. I should think about a year, but the records will show that distinctly.

Q. I think it was nearly two as a matter of fact. A. Well, maybe so.

Q. Eighteen months or something like that; did that strike you as seemly? A. Holding our offices there?

Q. Yes. I mean do you think that it comported with the dignity and importance and position of the Riparian Commission to have its

offices occupied by anybody, I don't say anything about Mr. Record, but by me or anybody else not connected with the Board? A. Well, we had an arrangement there that it was a little difficult to break away from, Mr. Attorney-General, although it might have rankled a little that we had to have these enforced conditions—

Q. As a matter of fact did not you and the other members of the Board, when the position of general counsel to the Board was abolished, want to have the office relations severed and did not Mr. Record make such a kick about it that you finally, rather than have a row, submitted for about a year or so; is not that about the situation? A. Yes; we discussed the matter over and he was reluctant to—he would not release us and we hung on there until Mr. Payne became so dissatisfied—of course he was the man who occupied the offices day after day in the performance of the duties of the office, of the Commission and the conditions he said became unbearable to him and we then—things came to a focus and we made up our minds to get out, and Mr. Record himself—the relations between Mr. Record and Mr. Payne became so strained that it came to the breaking point and we had to get out and finally Mr. Record ordered us out.

Q. I want to ask you, I think, about two more questions. I would be very glad to have your views on this subject before we adjourn. Considerable criticism was directed the other day by Mr. Fisk, the preceding witness, as to the character of the evidence that this Committee has had and listened and tolerated by one of its witnesses, Mr. Payne. Have you any suggestion or criticism to make with regard to the evidence that has appeared before this committee by Mr. Payne or anyone else, in other words have you anything to say, being one of the Commissioners, on that subject? A. Well, Mr. Attorney-General, I have not had an opportunity to examine the testimony and I did not hear it all, and I did—I had a very serious grievance and I wrote to Mr. Payne about it. It appeared in the newspapers and was alleged to be a stenographic report of the meeting in Jersey City while I was absent and certain questions and answers alleged to have been taken down stenographically were published and among other this: It said that Mr. Record asked Mr. Payne "Was my domination of the Board a corrupt one?" and the answer as given in the newspapers as an alleged stenographic report, the answer by Mr. Payne was "I do not know." That left the Board you see under the stigma of a very serious imputation. Mr. Payne wrote to me, giving the testimony from the real stenographic report and the question and answer were these, and you will see how they differ from the newspaper

story. "You do not"—I cannot quote the language, but as nearly as I can remember—"You do not mean to intimate, Mr. Payne, that my domination of the Board was in any sense a corrupt one?" "No, sir;" said Mr. Payne, and the newspaper article said that he replied "I don't know."

Q. It looks as though the newspapers do not always tell the truth. A. It does. I was going to bring that up before the Commission; but as I say now I am unable to answer your question because you see how serious a difference there was between the newspaper report and the real report; so I am not able to give an answer to that question until I have read the testimony.

Q. As far as that particular matter at least was concerned—A. It was all right really.

Q. The official record manifested no impropriety as to that? A. None at all; and there was some other things in that newspaper report which I cannot refer to here but which were not true at all.

Q. I understand that you desire at some more convenient day to make some general statement to the Board? A. The chairman of the committee asked me at the beginning of this investigation—he said he would call upon me for a statement of my views in regard to the policy of the state concerning its riparian interests, and I will submit some observations as the result of my experience and study of the subject when they take up that branch of the subject. I understand from the chairman of the committee that you intend to take that up at a later day.

Q. May I ask that at that time you further favor the committee with your views from your experience on this subject, as to the propriety of the state undertaking a system of leasing rather than of grants? A. That is a part of the statement; yes, sir; I will do that.

MR. DUFFIELD.—I have found the point you refer to in regard to Mr. Payne's testimony on page 435 of the record and it reads as follows:

"You have no idea or intention of suggesting that this alleged domination by me was in any sense a corrupt one?"

To which Mr. Payne replied:

"No, sir; I don't know anything about how far your domination went or what kind of domination it was. I only know the friendly relation existing. I do not use the word, 'dominate' in any offensive sense. I perhaps should have said 'influence'."

WITNESS.—Yes; the newspapers said that Mr. Payne replied "I don't know."

MR. DUFFIELD.—You see they quote the first part where he said, " No, sir ; " and give none of the rest of the answer.

WITNESS.—Yes, sir.

SENATOR MINTURN.—I notice in the certificate you produce signed by Mr. Record that he certified he had examined the title; do you understand from that he examined the abstract produced before the commissioners ?

THE ATTORNEY-GENERAL :—That is my understanding, that he does not go to any further examination than an examination of the abstract of the title, furnished presumably according to the rules of the board.

MR. DUFFIELD.—That is what he says in his evidence.

SENATOR WAKELEE.—Could the attorney have gone over the papers and certified anything further than that ?

SENATOR MINTURN.—I only want to call attention to the form of the certificate.

THE ATTORNEY-GENERAL.— I had not noticed that discrepancy before. I think there is a very important suggestion there.

MR. DUFFIELD.—Mr. Record testified that he merely examined such abstracts as were produced; his suggestion was that if any grant had been made without the abstract being examined it was because of Mr. Payne's failure to present such an abstract to him.

JOHN C. PAYNE recalled. Examined by the Attorney-General.

Q. Have you the original official map showing the Goetschius grant? A. Yes, sir ; I have the map, the official map referred to in the proceedings of Friday as having been laid before the Commission when the Goetschius application was considered.

Q. Of which this long map, so far as that locality is concerned is a sun copy ? A. Yes, sir ; I will explain that a tracing of the manuscript map from which the grant is made is put on this and a sunprint is made so that this is the original map that was laid before the Board.

Q. Then this map shows that at the time the Goetschius grant was considered the Board had laid before it the fact as shown on map—"Lease to Annette, April, 1874," as there shown ? A. Yes, sir ; and also on the upland is the name Annette and also two old docks are shown which have been referred to by Mr. Record in his correspondence with Senator Jackson as forming the basis of his suggestion of an offer of fifteen hundred dollars to the Commission at that time.

Q. Have you got here those letters which I referred to in the examination last week to Attorney-General Stockton ? A. Yes.

THE ATTORNEY-GENERAL.—I will with the Committee's permission select from the mass of letters here those which I referred to the other day and which I want to offer in evidence; I have here all the original correspondence which I referred to the other day, between Mr. Record and Attorney-General Stockton but whether I want to offer them all is a matter which will take a long time to find out and perhaps I had better offer them at the next session.

I now offer in evidence the application of the Hoboken Land & Improvement Company which I referred to this morning and the opinion of the counsel of the Board and of Mr. Attorney-General Grey thereon, dated April 7, 1899, in reference thereto, and ask that they be spread upon the minutes.

They are as follows:

To the Commissioners appointed under the Act of the Legislature of the State of New Jersey, approved March 31st, 1869, entitled "Supplement to an Act entitled 'An Act to ascertain the rights of the state and of riparian owners, in the lands lying under the waters of the Bay of New York and elsewhere, in this State,' approved April eleventh, eighteen hundred and sixty-four," and the supplements thereto, and the Governor of the said State of New Jersey:

The Hoboken Land and Improvement Company respectfully shows:

(1) That it is a corporation created under and by virtue of the provisions of an Act of the Legislature of the State of New Jersey entitled "An Act to Incorporate the Hoboken Land and Improvement Company," passed February twenty-first, A. D., eighteen hundred and thirty-eight, a copy of which act is submitted herewith.

(2) That in and by the said act the said company was authorized and empowered to purchase, hold, improve and dispose of both real and personal property, and especially to purchase, fill up, occupy, possess and enjoy all lands covered with water fronting and adjoining the lands that might be owned by them in the City of Hoboken, and to construct thereon wharves, harbors, piers and slips and all other structures requisite or proper for shipping purposes.

(3) That under and by virtue of the provisions of the said Act said Company acquired, soon after the passage thereof, a large tract of land in the city of Hoboken fronting on the Hudson river, a considerable portion of which it still retains; that on the first day of October, eighteen hundred and sixty-nine, said Company conveyed a portion of said water front to the Camden & Amboy Railroad & Transportation Company by deed dated on said first day of October, eighteen hundred and sixty-nine, and recorded in the Register's office of the County of Hudson in Book 204 of Deeds for said

county at page 148 ; the land so conveyed being described in said deed as follows :

Beginning.—At a point where the northerly line of Second street would intersect the easterly line of River street in Hoboken if said Second street was continued in a straight line from where it is now laid out, and running thence easterly and along the northerly line of Second street if the same was extended as above mentioned and for a part of the distance along the line of land under water, and water rights first above described out into the north of Hudson river as far as the rights of the party of the first part do now or may hereafter extend ; thence northwardly up the said river and parallel with the said River street at right angles with the first mentioned and described line ninety-three (93) feet ; thence westerly and parallel with the first described line to where the line marked "Exterior line of solid filling" is laid down on a map known as a map made and presented as a part of the report of certain Commissioners appointed under an Act of the Legislature of the state of New Jersey approved April 11, 1864, entitled "An Act to ascertain the rights of the state and of the riparian owners in the lands lying under the waters of the bay of New York and elsewhere in the state," runs thence southerly along the said last mentioned line about forty-three (43) feet to where the line parallel with Second street and fifty (50) feet northerly at right angles therefrom would strike said "Exterior line of solid filling" as laid down on said Commissioners' map ; thence westerly and parallel with Second street if extended as above mentioned to the easterly line of River street ; and thence southerly and along the easterly line of River street fifty (50) feet to the place of beginning.

(4) That by subsequent conveyances and acts of the Legislature the property so conveyed has since become and is now vested in the United New Jersey Railroad and Canal Company.

(5) That the Hoboken Land and Improvement Company is about to obtain a reconveyance of said property from the United New Jersey Railroad and Canal Company for the purpose of transferring the same to the Hamburg American Steamship Company for use in connection with its docks and shipping business at Hoboken.

(6) That no grant of the riparian rights of the State in the southerly fifty (50) feet of the said tract appears ever to have been made by the Riparian Commissioners and the Governor under the provisions of the act of 1869 above referred to.

Therefore, to assure the title to the same, and to obtain the benefit of the provisions of the fourth section of said act, and with the consent of the United New Jersey Railroad and Canal Company, as

evidenced by a writing under the seal of said company hereto attached, The Hoboken Land and Improvement Company respectfully applies for a grant of the title and riparian rights of the State in the lands under water in front of the southerly fifty (50) feet of said tract, and offers to pay to the State, for the same, the sum of fifty ($50) dollars per lineal foot measured on the bulkhead line, as provided in said act.

Dated March 29th, 1899.

THE HOBOKEN LAND AND IMPROVEMENT COMPANY.
BY RICHARD STEVENS,
2nd Vice Prest.

STATE OF NEW JERSEY }
COUNTY OF HUDSON } SS.

Richard Stevens being duly sworn, on his oath says that he is second Vice President of The Hoboken Land and Improvement Company, and that the matters and things in the foregoing petition set forth are true of his own knowledge.

RICHARD STEVENS.

Sworn and subscribed before me this 30th day of March, 1899.

A. C. HARTSHORNE,
Master in Chancery of New Jersey.

To the Honorable, the Riparian Commission of the State of New Jersey.

Gentlemen :—

In reference to the application of the Hoboken Land and Improvement Company for a grant of land in the City of Hoboken, on the waters of the Hudson river, the opinion of the Counsel of the Board and of the Attorney-General has been asked as to the power of the Board to make the grant and as to the rate of compensation which should be charged.

OPINION.

We are of the opinion that the Hoboken Land and Improvement Company became, by its charter, as interpreted by the Court of Errors and Appeals of New Jersey, in the case of the Hoboken Land & Improvement Company vs. The City of Hoboken (7 Vroom, page 540) and in the case of the City of Hoboken vs. Pennsylvania Railroad (124 U. S., page 656), the owner of all the lands lying between the original high water mark and the exterior wharf line, when established, including the land covered by this application.

We are also of the opinion that if the Hoboken Land and Improvement Company desires to have "a paper capable of being acknowledged and recorded," as provided for in the act of 1869 (Sec-

tion 4), the Commission may execute such a paper, and inasmuch as under the provisions of Section 1, of the Act of April 6. 1871, the power is given to the Commission to "grant or lease in all cases in which in their discretion they shall think such a grant or lease should be made, such rights, privileges and franchises as they are authorized to grant in cases coming directly within the fourth section," of the act of 1869, we think the Commission may fix such price as they, guided by the price named in the act of 1869, should think, under the circumstances of this case, to be a reasonable one.

In relation to the effect of River street, or the rights of the public growing out of the existence of said street, upon the application of the Hoboken Land and Improvement Company, we are of the opinion that said application is in no wise affected by the existence of the said street, or of any rights of the public therein, but in order to protect the rights of the public in question, if any there be, we suggest the insertion in the grant to be made to the said applicant of a provision making said grant subject to the rights of the public in the lands granted, if any there be, arising out of the existence of the said street or otherwise.

Dated April 7th, 1899.

George L. Record,
Counsel, &c.
S. H. Grey.

Adjourned to Friday, October 5th, 1906.

SENATE CHAMBER, STATE HOUSE.

Trenton, N. J., October 5, 1906.

Meeting of Special Committee of the New Jersey Legislature to Investigate the Granting of Riparian Lands by the State, etc.

PRESENT:

SENATOR MINTURN (who acted as Chairman) and ASSEMBLYMEN BARBER, REED, JONES and HOLCOMBE.

ATTORNEY-GENERAL MCCARTER and ASSISTANT ATTORNEY-GENERAL DUFFIELD.

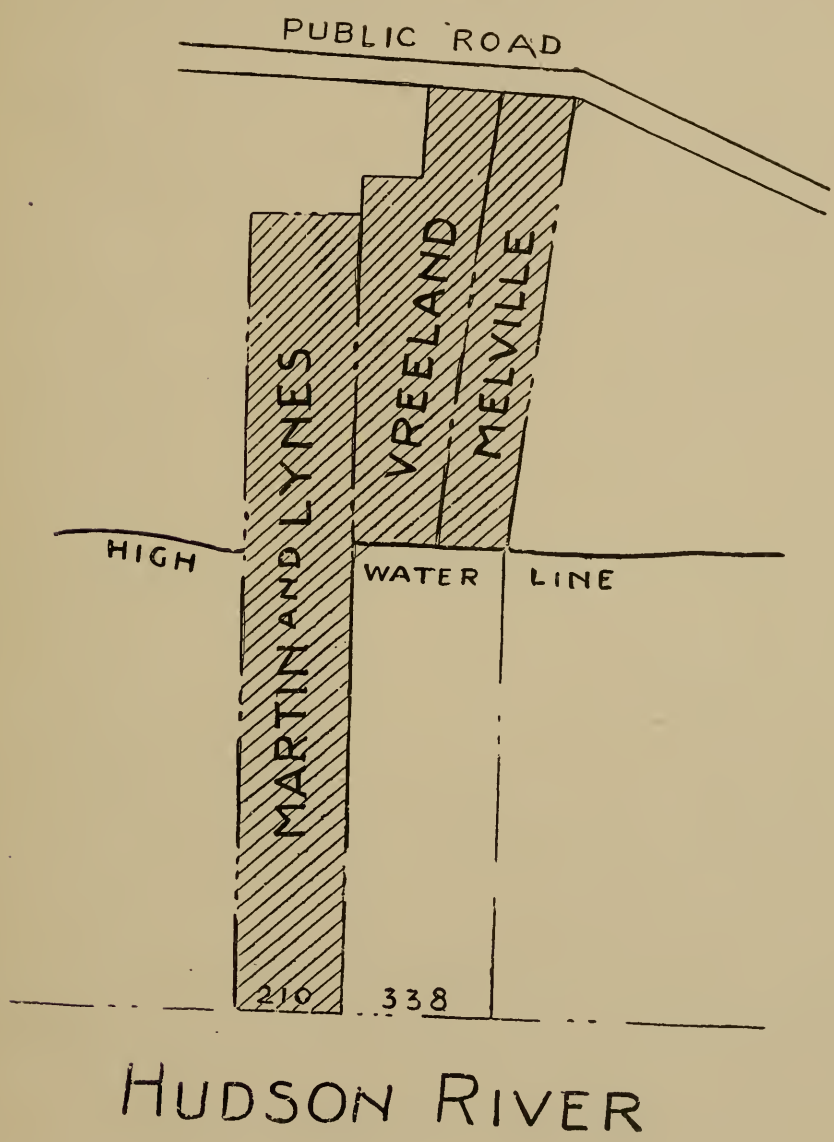
In the absence of Senator Wakelee, Senator Minturn acted as Chairman and called the Committee to order.

MR. MCCARTER.—If the Committee please, there is still an unfinished subject matter that I am unable to prosecute today, and that is the Edgewater and Fort Lee license, so-called. As I have before said, that company has failed to file with the Secretary of State a list of its officials. Of course, they are bound to have a New Jersey agent, and also a Director in this State. It is impossible for us,therefore, to subpœna any of the officials of that company in order to ascertain exactly what was paid by them, in toto, for the license which they obtained. I have written a letter to the general solicitor of the road, Mr. Brownell, requesting that he notify me who those officers are, so that we can subpœna them and get them here. As yet, I have not received an answer, and until we do get them, either voluntarily or otherwise, why the investigation upon that point will have to be temporarily suspended.

SENATOR MINTURN.—Is it your idea that more was paid for that grant than appears on the record?

MR. MCCARTER.—My idea is, that that grant cost the railroad company more than the state got, that is what I want to bring the officers of the company here to ascertain, and I can't find out who they are.

I want to offer in evidence a little sketch or map that has been frequently referred to, showing the situation about the Morris


PUBLIC ROAD
MARTIN AND LYNES
VREELAND
MELVILLE
HIGH
WATER
LINE
210
338
HUDSON RIVER

Building Company, and will request that the stenographer send it to the printer and ask him to have it lithographed in the report, as t makes the testimony very much more intelligible.

I will also offer in evidence some original letters of which I had copies here at the hearing the time before the last, and which I promised to produce.

The first is a letter dated October 16, 1893, law offices of Bacot & Record, No. 1 Montgomery street, Jersey City.

HON. JOHN P. STOCKTON,
Attorney-General.

Dear Sir :

Mr. R. C. Bacot has handed me for reply your favor to him of the 15th inst., in reference to the unpaid riparian leases. I have been working at the list of delinquents you sent Mr. Bacot for some time, under Mr. Bacot's direction, and will send you in a few days a report in two or three of the cases involving the largest amounts. I have found it much more difficult than I anticipated in obtaining definite and accurate information in regard to the persons at present interested in the leases.

A register's or county clerk's search of the title to the upland takes time, unless one has expert local knowledge, and even a search does not reveal the history of the leases if assignments have not been recorded.

I have, therefore, been driven to personal investigation, in which I have been compelled often to spend a great deal of time for a very little accurate information. I have taken the leases involving the largest amounts along the Hudson River as my first task, and will send you reports on each case as fast as it can be prepared.

Very respectfully yours,
GEO. L. RECORD.

At the end of that letter is the original list of the arrears due at that time from lessees covering two and one-half pages, and on the first page are the names :

Name	Paid up to	Semi-annual rental
James Annett et al.,	Oct. 18, 1875,	275.10
James Annett et al.,	Oct. 18, 1875,	378.87

The next letter is from Honorable John P. Stockton to Mr. Record, dated Trenton, July 31, 1894, and reads as follows :

Dear Sir—Yours of yesterday received. You have my consent to use my name in the proceedings you speak of whenever it becomes necessary in fulfillment of the orders of the Riparian Commission.

Also an original letter from George L. Record to Rebecca A. Simpson, dated June 6, 1895 :

Dear Madam :

I have been instructed by the Riparian Commissioners, and the Attorney-General of the State of New Jersey, to collect the arrears of rent due to the State from the holders of riparian leases. The books of the State Treasurer show that the last payment made on your lease was on August 3, 1888, and that you are, therefore, indebted to the State for rentals since that date, amounting to eight hundred and twenty-nine dollars and twenty-seven cents. Will you kindly advise me what I can expect from you in the way of payment for this indebtedness, and oblige,

Yours very truly,

GEORGE L. RECORD.

I will state to the Committee, what is perhaps obvious, that the object in introducing these letters is to show that Mr. Record was employed by the Attorney-General to collect these rentals, and that pursuant to that employment, he wrote this letter to one of the tenants in arrear.

I have another letter from John P. Stockton to George L. Record, dated Trenton, N. J., June 12, 1895 ; this is also an original letter :

Dear Sir : I enclose herewith at your request all the correspondence I find which took place between you and myself and Mr. Bacot in reference to the riparian leases which were in arrears when I was last engaged in attempting to collect the amount due or cancel the leases, about the year 1890.

The papers are seven in number, which please take care of in order that they may be returned to the office with this letter when you have no further use for them.

Very truly yours,

JOHN P. STOCKTON.

Then I have an original letter, a copy of which was produced before, dated Trenton, July 25, 1895 :

GEORGE L. RECORD, ESQ.,
Counsellor-at-Law,
Jersey City, N. J.

My dear Mr. Record :—In reply to your letter of the 24th, just received, I have to say that any payment made through you should be made by checks drawn to the order of George B. Swain, State Treasurer, and forwarded under cover to me.

In reference to your compensation, if you want some money now, I suggest that you make out a moderate bill, separating the expenses from the services, and attach to it the resolution of the Riparian Commissioners of which you sent me a copy, and I will present it to the Governor and see if I cannot put it in shape to be paid at once.

When some important result is reached, such as the cancelling of the Brownell leases or the settling of the Annett matter, it will be easier of course to get you a proper compensation than in the ordinary routine of matters. I am,

Very truly yours,
JOHN P. STOCKTON.

Also an original letter from George B. Swain, State Treasurer, to George L. Record, Counsellor-at-Law, Jersey City, N. J., dated May 14, 1897 :

Dear Sir :—I return you your statement of amounts, etc., of riparian rentals, having filled up date of payment and am't.

Respectfully,
GEO. B. SWAIN,
Treasurer.

Also an original letter from Governor Voorhees, dated January 11, 1901, addressed to John C. Payne, Esq.

Dear Sir :—Enclosed you will find a letter addressed to the Board on behalf of J. M. Goetschius, by his counsel, William M. Johnson.

Will you kindly file the same and present it to the Board for its consideration at its next meeting?

Yours truly,
FOSTER M. VOORHEES.

These original letters I will offer in evidence.

JAMES A. C. JOHNSON, sworn. Examined by Mr. McCarter.

Q. You are a member of the New York Bar? A. Yes, sir.

Q. Are you also a member of the New Jersey Bar? A. No, sir.

Q. Your residence is where? A. Englewood, New Jersey.

Q. Do you know Mr. Shamberg? A. Yes, sir.

Q. Who bought some uplands on the Hudson river and presented an application to the Riparian Commission? A. Yes, sir.

Q. Presented an application for a grant? A. Yes.

Q. Did you have any professional relations with him in connection with that matter? A. When Mr. Shamberg first intended to buy some land, I had a piece of water front which belonged to a a client of mine which I offered to him. It was not satisfactory, and I knew some others which I offered, and finally investigated about every piece of water front in the city of New York for him.

Q. This water front that you were interested in and which you desired to sell to Mr. Shamberg, was located where? A. You mean the first piece?

Q. Yes. A. I think it was located in Hoboken.

Q. Was that the piece which he finally bought? A. No, sir.

Q. You finally examined all the water front you say in the neighborhood of New York; did you have anything to do with the final purchase by Mr. Shamberg of some water front there? A. Yes, sir; I had something to do with it.

Q. Did you act as his counsel in the matter? A. No; I can't say that I did; I was his friend and represented him; but, of course, the title was examined by other people.

Q. Well, on his behalf you did interest yourself in the matter? A. Yes, sir.

Q. Who represented the owner of that property? A. Mr. George L. Record.

Q. Did you know either through Mr. Record or otherwise, prior to the final passing of the title, exactly who the real owner was? A. Yes, sir; I think I did.

Q. Who was it? A. Well, I will have to tell you—the title to that property was not straight, that is, it was not an ordinary regular purchase of land, because the owners—it was owned by the Bulls Ferry Land Company, and two-thirds of the stock of the Bulls Ferry Land Company was owned by a concern called Cole and Perrin, who had made an assignment for the benefit of creditors, and they also put a second and third mortgage on the property, and Mr. Shamberg had to purchase the second and third mortgages and two-thirds of the stock of the company that owned the land. The

second mortgage was afterwards foreclosed and the title comes through that foreclosure.

Q. Leading up to the negotiation for the property, did you have any talk with Mr. Record concerning the chances of Mr. Schamberg getting a grant from the State of the riparian rights? A. Yes; most of our negotiations for the purchase of this land and the mortgages and stock were with Mr. Record.

Q. About when was that? A. We negotiated in 1902.

Q. Most of your negotiations were with Mr. Record? A. Practically all with him.

Q. What was said between you and him, you on behalf of Mr. Schamberg, and Mr. Record on behalf of the land in which he was interested, as to the riparian rights, and what Mr. Schamberg could do in the way of getting riparian rights in connection with this upland, if he did buy? A. Mr. Schamberg was quite careful, of course, about buying the land, and careful about finally selecting a piece of land, and, of course, as soon as we began to settle on this piece, we naturally found that the riparian rights didn't belong to the land, with the exception of a very small portion, I think about 40 feet, which the owners already had, and, of course—well, Mr. Record was counsel of the Board, and very naturally we would ask him about it.

Q. Was any statement made by Mr. Record in regard to that matter, and what you could do or get from the Board? Tell all you heard from Mr. Record touching the chances of your getting the riparian lands in connection with this upland, if you bought it. A. Of course, this was back in 1902.

Q. The best you can recall. A. The best I can recall, Mr. Record was very fair about it, and he told me, the best I can remember, that he could get the rights, I think it was under $80,000; I think that was the price, with the possibility of getting a rebate off that price if Mr. Schamberg improved the land. I told that to Mr. Schamberg, and I think he purchased the land with that in view.

Q. Do you remember getting a letter from John C. Payne in regard to the character of the bottom land, or the land under water in front of this property? A. I don't remember, but I may have, because I talked to him about it.

Q. Here is the letter, it has already been offered in evidence. This letter the Committee will recall was written by Mr. Payne to Mr. Johnson at Mr. Record's request. I will show a copy to Mr. Johnson. Do you remember getting that letter? A. I think I did.

Q. It also appears in evidence,—as a matter of fact, you have

been subpoenaed here? A. Yes, sir; I was subpoenaed to come here.

Q. I will re-read this letter just to refresh the Committee's recollection of it. It is dated November 20, 1902:

J. A. C. JOHNSON, ESQ.,
49 Wall street,
New York City.

Dear Sir:—I am requested by Mr. Record to send you my opinion of the character of the bottom in front of the Bulls Ferry property on the Hudson river.

I have known for twenty years, as engineer of the Riparian Commission of the State of New Jersey, having charge of the sale of the water front of the State of New Jersey for commercial uses, of the improvements made on this part of river front. I have known of and seen the improvements made by different corporations occupying the water front in that locality and have personally made soundings at different points, in order to ascertain the character of the bottom of the land under water.

From my knowledge and examination, I am satisfied there is no difficulty in securing such foundation for crib work as it is necessary to hold the filling deposited behind it in order to bring the land up to a height suitable for commercial uses, and there is no difficulty in securing such a footing for piling out to the pier head line as will sustain any structure that will be needed to be built in connection with the property.

In the practice of my profession and my connection with the Riparian Commission, I have laid out several of the dock properties which are now improved, and have known of the improvements as they were made, and these improvements are now in existence and demonstrate the truth of what I have stated, that there is no difficulty in filling and building piers.

I was familiar with the improvements made by the Erie railroad. I made surveys in connection with the improvement made by the West Shore Railroad Company at Weehawken before the improvement was started. I located the line for the docks of the Wilcox Lard Refining Company. I made the surveys and soundings of the property now occupied by the New York, Susquehanna and Western Railroad Company, as well as the improvement made by Ross and Sanford at Coytesville. These fillings and docks are now in existence and demonstrate the feasibility of making improvements along this water front. All of the above concerns have, for many years, maintained piers built upon property along the shore, and

have conducted the ordinary business incident to freight terminals of railroad companies and large manufacturing industries.

As to the rock in this bottom, it is entirely safe to say that the rock shelves off very rapidly from the shore out into the river. Probably, near the shore, you would strike rock at a distance of twenty to thirty feet; at a distance of one hundred feet from the shore you would probably strike rock at about fifty feet; and from the 100 foot line out into the exterior line, the rock would certainly not be any nearer the surface than this, and probably would be found at a still greater depth.

Very truly yours,

(Signed) JOHN C. PAYNE.

Now, that letter was received by you while these negotiations were pending? A. You mean before we purchased?

Q. Yes. A. I think it was; it was part of the negotiations I made for Mr. Shamberg.

Q. Mr. Shamberg is here, but I will ask you also whether you know that the acquisition of the riparian grant was an essential element in the purchase of the property by Mr. Shamberg, that he didn't care to have the upland unless he got the grant? A. Absolutely; he had to have it.

Q. Did you subsequently present an application on behalf of Mr. Shamberg to the Board? A. Yes, sir.

Q. I show you an application of Alexander J. Shamberg, of the city and county of New York, purporting to be signed by you; look and see if that was the application that was presented by you on behalf of Mr. Shamberg for a riparian grant in front of this property? A. Yes, sir.

Q. Do you know whether at the time that was presented Mr. Shamberg had acquired the upland? A. Yes; he had the upland, when that was presented to the Board.

Q. The conversation that you have recited with Mr. Record in which you were told that the grant would probably be given for about $80,000, had occurred previous to the presenting of this application? A. Yes, sir.

Q. Do you know whether or not at the time that application was made, Mr. Shamberg was willing to pay for this grant, and, if so, how much? A. I don't remember, Mr. McCarter, but he wanted the grant.

Q. And the figures of $80,000 were not prohibitive? A. I don't think they were prohibitive; I think he expected and hoped to get it for less. He calculated to get it for less, but I think if he could

not have gotten it for less than $80,000, he would have paid $80,000.

Q. In other words, after you were told by Mr. Record, the counsel of the Board, if he would take the upland he had no doubt that he would get the grant for $80,000, he closed the deal? A. Not only that, but I think the price of the other grants was about that. I am not quite certain, but I think Mr. Payne may have said that, too.

Q. Do you know where this property is located? A. This property Mr. Shamberg bought?

Q. Yes. A. Yes, sir.

Q. Where is it? A. Part of it is on the Hudson river and part in Hudson county, and part in Bergen county; right on the county line.

Q. How much front has it? A. About 1,600 feet front, I think.

Q. Was this application ever granted? A. Not to my knowledge.

Q. What was the next thing you heard about this thing; instead of this being granted, what did you hear about it? Here is an application pending for a grant for which the applicant is willing to pay $80,000. What did you hear about this grant to the railroad? A. No. I don't think the railroad grant had been made at that time.

Q. What is the next thing you heard? A. I heard that the railroad had been granted a right of way across that. Mr. Shamberg was very much excited about it, as I remember.

Q. In other words, you heard that the New Jersey Shore Line Railroad Company had obtained a license? A. I did not know exactly in what form it was, whether it was a grant or a license, but anyway the right of way was across this property, took part of the upland, a small portion of the upland, and the rest in the riparian rights.

Q. If you were shown a map could you locate, as you understand it, the position of the grant or license to the New Jersey Shore Line Railroad? A. It went right along the shore just a little bit, and then turned in there.

BY SENATOR MINTURN.

Q. It crossed the entire land you were after; did it cross the entire shore front? A. It crossed the shore front on the Hudson river and then back from the shore into Bergen county; it turned off to the northwest here.

BY ASSEMBLYMAN BARBER.

Q. Did it destroy the value of the land? A. It shut him right in there; he was fenced in; he had to go to the Court of Errors and Appeals to have it upset.

MR. McCARTER.—I offer in evidence the license from the State of New Jersey to the New Jersey Shore Line Company for the property that Mr. Johnson has just referred to, dated January 7, 1904—while this application was pending for which the State could have received $80,000—to build this railroad in front of this property, for $300.

I also offer in evidence an amended application for an amended license, in which the description is modified slightly, and under that application, made for the same thing, or a little bit more, the State got the munificent fee of a hundred dollars more, or a total consideration for the license, that this railroad company gave to the State, such as you have described, of $400.

BY SENATOR MINTURN.

Q. Was there any notice of that license to the railroad company given to Mr. Shamberg? A. No, sir; I don't think there was.

Q. You never heard of it? A. I think I would have known it if Mr. Shamberg had received notice. I know we never knew anything about it until after the grant had been given to the railroad.

MR. McCARTER.—I will say to the committee, that Mr. Shamberg is here and will testify about that. I happen to have here a copy of the rule setting aside this license or grant, of the Supreme Court of the State of New Jersey, entered March 3rd, 1905. I will read it in evidence.

NEW JERSEY SUPREME COURT.

February Term, 1905.

Alexander J. Shamberg, vs. The Board of Riparian Commissioners of New Jersey et al.	On Certiorari. Rule Setting Aside Grants.

The Court having heard the argument of counsel and inspected the grants of the Riparian Commissioners of the State of New Jersey and the proceedings removed by the writ in this cause, and duly considered the reasons filed—

It is ordered that the said grants of the Riparian Commissioners, brought up by the writ in this cause, be and the same hereby are set aside with costs.

Entered March 3, 1905.

On motion of COLLINS & CORBIN, Attys.

A True Copy.

WM. P. RIKER, Jr., Clerk.

MR. McCARTER.—The report of the case indicates the reason why the license to this railroad company was set aside was that Mr. Shamberg had not received notice.

The Assistant Attorney-General called my attention to the fact that I think may well be noted, that Mr. Shamberg's application is dated and was filed October 15, 1903. The first application for the railroad license was not filed until January 5, 1904. In other words, there was three months' difference between the two. The license from the State of New Jersey to the New Jersey Shore Line is dated January 7, 1904, or just two days after the application was filed. There seems to have been very great expedition in that matter.

Q. So far as you know, Mr. Johnson, has any action ever been taken on Mr. Shamberg's application? A. I don't think he has ever received a grant, not to my knowledge ; in fact, I know he has not.

BY SENATOR MINTURN.

Q. Were you aware that the application of the railroad company was pending before the Board of Riparian Commissioners? A. We never knew anything about it until after it was granted, and exactly how we learned that I have forgotten, but I know we learned it somehow. I don't know how we were told about it—but never knew anything about it.

BY MR. McCARTER.

Q. Did you appear before the Commission personally in behalf of Mr. Shamberg? A. Yes, sir.

Q. Besides presenting the application? A. I believe I did once.

Q. Did you present the matter on behalf of Mr. Shamberg? A. Yes, sir ; I remember making an argument there.

Q. Have you ever heard any explanation from the counsel of the Board or anybody else in connection with it, why it is that the State of New Jersey ignored the application that was presented by Mr. Shamberg, pursuant to the suggestion made previous to the purchase of this land, upon the granting of which the State would have gotten $80,000, why that whole thing has been ignored? A. I can't say that I have. We knew that it was generally noised around that the railroad was going to try and go up there, but of course, go there by the purchase of a right of way, and there was some talk, I don't remember where I heard it, that the price of the riparian rights might increase in value about that time—something like that.

Q. What I want to know is, you were counsel for Mr. Shamberg in this matter, and you were told that undoubtedly you could get a

riparian grant here for $80,000, and Mr. Shamberg bought that upland, as you say, on the faith of getting it for that money. He made his investment, you applied to the Riparian Commission ; you were willing to pay on his behalf $80,000 ; has any explanation ever been given to you why that application has been absolutely ignored and a right given to the railroad company for $400, which shuts out Mr. Shamberg completely ? A. No, sir ; I can't say that any explanation has ever been made to us.

BY SENATOR MINTURN.

Q. Did you have a hearing before the Commission ? A. I went there. I think I appeared on the 4th of October, before the application had been filed. My idea at that time was this, that—I think Mr. Payne told us, either Mr. Payne or Mr. Record, anyway I heard it at the riparian office—that if Mr. Shamberg intended to speculate in the riparian grant it would be one price, but if he intended to put an industry there, it was the policy of the State to lower the price in order to encourage any industry going in that locality, and I appeared there in order to explain what Mr. Shamberg intended to do, and that his application was made in good faith, and he was not buying the land to speculate with.

Q. What was his proposition, to speculate ? A. No ; he intended to establish his business there.

Q. And that was said to the Commission ? A. I said that to the Commission.

BY MR. McCARTER.

Q. It appears by an abstract from the minutes, unfortunately the minute book is not here, on October 15, 1903, Mr. J. A. C. Johnson appeared in the matter of the application of Mr. Alexander J. Shamberg, and on motion the matter was laid over for further consideration. Apparently the date Mr. Johnson appeared was October 15, 1903 ? A. Yes. I was also there that day, and preliminary to that I was there.

Q. That is all.

ALEXANDER J. SHAMBERG, sworn. Examined by Mr. McCarter.

Q. Where do you live ? A. New York city.

Q. What is your business ? A. A little of everything pretty much, but my most active business is the live cattle business.

Q. Are you the Alexander J. Shamberg who presented a petition to the Riparian Commission for a grant ? A. I am ; yes, sir.

Q. Are you also the owner of some upland at Bulls Ferry ? A. Yes, sir.

Q. When did you become the purchaser of that? A. In the latter part of 1902.

Q. Was Mr. Johnson, who just left the stand, working for you in the matter? A. I didn't think so. I thought he was working for Mr. Record.

Q. Well, be that as it may. What was your purpose in buying that upland? A. My purpose was to locate my business at that point.

Q. And that business would be what? A. The yard of my shipment of live stock, intended for local and international business.

Q. Shipments coming from what place, the west? A. From Canadian points, western points and southern points.

Q. Did you need a water front? A. Yes, sir.

Q. Had you any purpose in buying the upland if you could not get free access to the water front? A. Decidedly not.

Q. What investigation did you make before purchasing the property to find out whether or not you could get the water front? A. My decision to purchase was based on Mr. Johnson's statement, Mr. Record's statement, some statements of Mr. Payne, and the previous records of transactions of the state of New Jersey.

Q. To what effect? A. The purchase of the riparian rights.

Q. At what price? A. At a fixed price.

Q. And what price was that? A. At that time, as near as my recollection serves me, it was about $50 a front foot.

Q. Was Mr. Record interested in this land? A. I understood Mr. Record was selling this land for clients.

Q. And you were told, as I understand you, that you could get that land at about what the other grants were made for, which would be about $50 per front foot? A. Yes, sir.

Q. How much would that have amounted to? A. About $80,000.

Q. Were you willing, if worst came to worst, to pay $50 per foot? A. I was, provided I could get the same deal that the others got, that is, a refund for improvements if they were immediately made.

Q. How much upland did you buy? A. About 20 acres.

Q. I don't want to be inquisitive, and if you prefer not to answer it you need not, but we would like to know how much you paid for it; in other words, how much investment you made in expectation of this grant? A. I would prefer not to answer. I would not object to telling you privately, but I don't care to make a public statement of it.

Q. It amounted to a considerable sum of money? A. Yes, sir.

Q. Would you have made that purchase if you hadn't fully expected to have gotten a riparian grant? A. Decidedly not.

Q. Was the purchase any good to you with a railroad running at grade between you and the water? A. Certainly not.

Q. Did you authorize the making of an application to the Riparian Commission for a grant after you had obtained the upland? A. Yes, sir.

Q. And knew it had been made? A. Yes, sir; I did.

Q. It seems to have been presented October 15, 1903; has it ever been granted? A. No, sir.

Q. When did you first learn that the railroad company, the New Jersey Shore Line Railroad Company had been given a license in front of this land? A. I think it was early in 1904, a clerk from the office of Vredenburgh, Wall and Van Winkle, came to my office with a map, showing me that they had secured their right of way from the State, a grant of a right of way in the State's land, and all they wanted from me was a small ribbon of land for which they offered me a hundred dollars and wanted me to accept it.

Q. That is the first you knew of their rights in the premises at all? A. Yes, sir.

Q. Had you any notice given to you by the Riparian Commission, or by the New Jersey Shore Line Railroad Company of their proposition to get the grant or license? A. None whatever.

Q. I think you instructed your counsel, Mr. Corbin, to take proceedings which have resulted in setting that aside, because you had no notice? A. Yes, sir.

Q. In the meantime, what has become of your application? A. Well, you have it here today; that is all I know.

Q. You never got your grant from the Riparian Commission yet? A. No.

Q. The application is still pending? A. I hope so.

Q. Is this railroad built there? A. No.

Q. Assuming that the railroad has no rights there, and that they are ours, assuming that to be so, is your frame of mind in regard to getting a riparian grant the same as it was when you presented the application? A. Decidedly so; yes, sir.

Q. You would be perfectly willing to pay the figure that has been spoken of, if you could get a free and clear riparian grant for that property? A. Yes, sir.

Q. Is the property useful to you without that? A. No, sir; it is practically inland property.

Q. Did you meet Mr. Record before you bought this property? A. Yes, sir; I did.

Q. Did you ever have any talk with him about the thing? A. Yes, sir; satisfied myself about the statements made.

Q. What statements did he make to you touching the probability of your getting a riparian grant, that induced you to go ahead and buy this upland? A. I was not familiar with the way the State of Jersey granted its riparian property, and while Mr. Johnson made some statements, I thought it well to have them from Mr. Record. He told me that he could not sell me the riparian grant. I would have to secure that from the State of New Jersey. I didn't want to pay the price that he said would have to be paid for it, because in the State of New York the grants are made for considerable less money, but finally I decided that if I could not do better I proposed to make the purchase at his figure, and that was at about $50 per foot, with a rebate for improvements.

Q. Did you indicate that to Mr. Record, that conclusion of yours to do so? A. Yes, sir.

Q. How long before you purchased the upland was it that you were told that the figure of $50 per foot would purchase the riparian grant? A. I suppose two or three weeks; we were still dickering on the price of the land at the time.

Q. Did the price that you could get the riparian grant for enter into the figure you finally agreed to pay for the upland? A. No question about that.

Q. Am I right then in the conclusion, that Mr. Record, on behalf of whoever was the owner of that property, himself or his client, dickered with you in regard to the figure you would pay for the upland, and in that included the price that you could get the riparian grant for, and that finally you and Record closed upon the basis that has been before stated of about $50 per front foot for the riparian grant? A. Mr. Record never stated an absolute and decided figure, but in every intimation I was satisfied that I could get the riparian right for $50 per foot, less rebate for improvements.

Q. Don't let us have intimations; tell us what was said and what you acted on. A. Mr. Record stated what grants had been made, and that if I cared to satisfy myself on the details of the same, I could see Mr. Payne or have somebody see him, which was done, and that proved to be as I say, that grants were made at about $50 with refund for improvements.

BY ASSEMBLYMAN BARBER.

Q. How much would that refund reduce the price to? A. I understood it was to be ten or twenty dollars per front foot.

BY MR. McCARTER.

Q. Did you ever see any of the Commissioners prior to the application to the Commissioners? A. No, sir; none at all.

BY SENATOR MINTURN.

Q. Through whom did you buy the upland? A. Through Mr. Johnson, acting, as I supposed, for Mr. Record.

Q. Mr. Johnson acting for Mr. Record in the sale of the upland? A. Yes, sir.

Q. And then Mr. Johnson undertook to act for you in the purchase of the land under water? A. Mr. Johnson, Senator, tried to carry out his end of the bargain as broker, I understood from Mr. Record. I didn't pay Mr. Johnson for any service, legal or professional.

Q. You didn't pay Mr. Johnson anything? A. No; he didn't act for me in the matter.

BY MR. McCARTER.

Q. Then it was part of the deal that an application should be presented on your behalf to the Riparian Commission, and of course, if possible, a grant obtained of the upland for you at the figure spoken of, and that Mr. Johnson, as you supposed, acting for Record, made the application that has been presented, in pursuance of that deal? A. Yes, sir.

Q. Then Mr. Johnson was not paid by you at all? A. No.

Q. Have you ever had any explanation from Mr. Record or from anybody in connection with this thing, why your application was never granted? A. After the grant made to the railroad company I didn't try to seek any.

Q. But before that? A. Why there was not?

Q. Yes. A. I supposed they were thinking the matter over to see what could be done with it.

Q. Was any explanation ever made to you on behalf of anybody in connection with the Riparian Commission, the counsel or otherwise, why they made that grant to the railroad for $400 and made your proposed grant useless? A. No, sir; I never had any explanation.

BY SENATOR MINTURN.

Q. Why didn't you seek one, why didn't you look for one? A. I don't know. I have my way of figuring it out. Mr. Record succeeded Mr. Vredenburgh, who acted for the New York Central, and I thought I would quietly lay back. I didn't do anything but put the matter in Mr. Corbin's hands.

Q. Here was a license for a grant of land which in your estimate rendered your land worthless for the purpose for which you wanted it, and according to the Supreme Court was illegal; you must have

had that theory, or you would not have commenced that suit? A. I didn't act other than turn the case over to Mr. Corbin.

Q. But before that, did you make any inquiry whatever as to the inducement moving the Board to make that grant? A. No, sir; I spoke to Mr. Johnson about that matter and he was flabbergasted.

BY MR. McCARTER:

Q. I didn't understand what you said a moment ago in reference to the New York Central railroad; you said somebody succeeded Mr. Vredenburgh as counsel for the New York Central? A. I understood that Mr. Record succeeded Mr. Vredenburgh as counsel for the Riparian Board.

Q. This New Jersey Shore Line railroad is a subsidiary road to the West Shore road? A. And the New York Central railroad.

Q. About where does it propose to run? A. I have been trying to find that out. I don't see where it starts or ends. It seems to be a connecting road; a short road, perhaps half a mile.

SENATOR MINTURN:—Who made the application on behalf of the railroad?

MR. McCARTER:—Mr. Frank H. Earle.

SENATOR MINTURN:—Is that the Jersey City engineer, Mr. Payne?

MR. PAYNE:—Yes, sir.

SENATOR MINTURN:—He is within reach of a subpoena?

MR. DUFFIELD:—This is not the Edgewater railroad; this is the Shore Line.

SENATOR MINTURN.—This is a separate grant altogether.

MR. McCARTER.—I have here a resume of what the record shows in regard to the New Jersey Shore Line Railroad Company, and, if proper, we will produce the minutes at the next meeting. I will refer to this:

January 5, 1904. Date of Application. Messrs. Vredenburgh, Wall and Van Winkle, Attorneys.

January 7, 1904, application presented at meeting of Commission by James B. Vredenburgh and Mr. Frank H. Earle.

Granted at $300. It was executed January 7, 1904, and on January 26, Frank H. Earle was notified that the license was ready, by the following letter:

January 26, 1904.

FRANK H. EARLE, ESQ.,
Jersey City, N. J.

Dear Sir: The license by the State to the New Jersey Shore Line Railroad Company is now ready for delivery at this office, one to the order—[there is a mistake in this letter]—one to the order of Frank

O. Briggs, State Treasurer, for $300, the consideration named in the license, and one to the order of George L. Record for $15 for preparation of papers, etc. Also the delivery of the executed agreement under which the license was executed.

Yours respectfully,

JOHN C. PAYNE,

Secretary.

MR. McCARTER.—I presume that Mr. Record got his $15 ?

SENATOR MINTURN.—Did the State get the $300 ?

MR. McCARTER.—I presume it did.

BY SENATOR MINTURN.

Q. Did you ever receive any notice of this application of the railroad ? A. No, sir ; never.

Q. When did you first hear of it ? A. One of the clerks from Vredenburgh, Wall and Van Winkle, showed me the grant as being made, on a blue print, early in 1904.

Q. After you learned that did you make any attempt to inquire why the Board ignored your rights in the matter and gave this grant without any notice to you ? A. I didn't do any different than turn the matter over into Mr. Corbin's hands.

Q. You did that at once ? A. Yes, sir.

Q. And then this suit was brought ? A. Yes, sir.

BY MR. McCARTER.

Q. Do you know whether a new application has been presented by Mr. Corbin to the Board ? A. I think I signed an application, not a renewal, but a notice to act.

Q. An amended application ? A. Yes, sir.

MR. McCARTER.—That was presented to the present Board apparently on July 26, 1905. It is dated July 22, 1905, and it reads as follows :

TO THE BOARD OF RIPARIAN COMMISSIONERS, NEW JERSEY.

Gentlemen :

On October 15, 1903, I, Alexander J. Shamberg, of the city of New York, presented an application for a grant of lands under water in front of my premises near the Old Bulls Ferry in Hudson and Bergen counties in the State of New Jersey, giving full description of my lands. My application has never been acted upon by the Board.

I respectfully ask that you take action upon it and fix the price of the grant which I am to pay to the State.

I respectfully call your attention to the fact that your Commission has already given a lease of a strip of forty feet wide, extending out from the Old Bulls Ferry pier, so that my property consists

of two nearly equal parcels—one to the north and the other to the south of the Bulls Ferry pier, so that the State has, at that point, no continuous large parcel, as might be indicated by my former application.

I also call attention to the fact that the New Jersey Shore Line railroad has been chartered and has located its railroad along the shore, substantially between high and low water mark, taking nearly all the ripa in front of my property and cutting off the upland from it.

The company is now condemning the land and proposes to occupy a width of eighty-five feet to the south part and about seventy-six feet to the north part.

I think this location of the railroad, which has lately been adjudged by the Supreme Court to be lawful, greatly injures the riparian right and renders it much less valuable than it otherwise would be, and I request that this be taken into consideration in fixing the price of the State grant.

For your convenience, I annex hereto two descriptions, prepared by Thomas H. McCann, Civil Engineer—one for the southerly portion, and the other for the northerly portion, desired to be granted from the State. These descriptions embrace the land from the high watermark to the exterior line for solid filling. I, of course, desire also to have such rights as the State will grant, in the land outside of the exterior line for solid filling.

Confirming and renewing my former application, and requesting your prompt action upon the same, I am,

Respectfully,

ALEXANDER J. SHAMBERG.

Dated, July 22, 1905.

MR. McCARTER :—I think it is fair to state that my information is, and I am satisfied it is accurate, that since this application has been presented, this amended one, the matter has been, at the request of Mr. Corbin, deferred by the present Board because of this litigation, and other reasons that seemed good to Mr. Corbin. In other words, I don't want this Committee to entertain the impression that the present Board is ignoring this application, the amended application. On the contrary, they have laid it aside at the request of Mr. Corbin. One of the Commissioners will testify that the tentative price they have fixed for this is $150 per front foot.

BY SENATOR MINTURN.

Q. Did you ever inquire of Mr. Johnson why your grant was not made and why this grant was made to the railroad ? A. I think we had some talk on it ; yes, sir.

Q. Did he give any reason for it? A. He could not.

Q. That is all.

MR. McDOUGALL HAWKES sworn. Examined by Mr. McCarter.

Q. You reside where? A. I reside at 42 East Twenty-sixth street, Borough of Manhattan, in the city of New York.

Q. Have you ever had any opportunity to become acquainted with the methods employed by the New York authorities in disposing of their riparian rights? A. I have had the fullest possible opportunity.

Q. How did you gain that opportunity? A. I was Commissioner of Docks of the City of New York during the whole of Mayor Low's administration, and I have kept up since then my acquaintance with the water front. I am Vice President and General Counsel of the Maritime Exchange; I represent the interests in the Water Front of the Chamber of Commerce, on its Committee of Harbor and Shipping, and I occupy a somewhat similar position in regard to the Merchants' Association on their Committee on the Harbor. I occupy a somewhat similar position in regard to the work of the City club of New York, and I have been engaged in a very extensive legal practice in connection with water front matters, and in addition to my legal practice I have a degree of Engineer, and was appointed by Mr. Low to the position of Dock Commissioner partly for that reason.

Q. This committee is investigating the whole subject of riparian grants in our State, and I think they would be very glad to have the benefit of any of your experience or knowledge touching the proper way to dispose of them, and also, incidentally, to tell us how they do it in your State? A. I shall be very glad to give you that information. In the first place, there must be no confusion between grants made by the City of New York of lands under water and grants made by the State. The two are entirely separate. Under the first colonial charter to the city, known as Nicholl's charter, no land was transferred by the Crown to the city, but subsequently under the Dongan charter, the old City of New York, which now comprises the Borough of Manhattan, received a grant of the land under water around the Island of Manhattan between high and low water mark. Subsequently, through another colonial charter, (Montgomerie Charter) the City of New York acquired a strip of land around a part of Manhattan, which reached 400 feet beyond low water mark. Other early grants by the Colony or State enlarged this strip and extended the city's ownership. Such is the

origin of the ownership by the old City of New York of land under water.

The Crown, of course, claimed ownership to all navigable streams, all land under water, which hadn't been granted under the Dutch rule, or by itself, and the State of New York succeeded to the ownership of all that property when the colony passed into the republic. The State of New York] has followed ever since then, a consecutive, systematic policy in regard to the treatment of that land under water. In the municipality, within the lines of the municipality, it has frequently made grants of land under water to the municipality, absolutely free of charge, for example, the foot of the streets. In sections in the municipality, where the city appeared to have no particular use for the water front for the purpose of immediate improvement, the State has made grants to private individuals, and those grants are either for what is known as beneficial enjoyment or commercial improvement. The rates which the State has established for such grants are in no way excessive. It has been the policy of the State by making grants at low figures to encourage commercial development along the water front all over the State. At various times the question of stopping these State grants came up, and upon investigation, while I was Commissioner of Docks, such an investigation was gone into, the authorities have agreed that it was to the very best interest of the state to make absolute grants of land under water, because it was found that with leaseholds only, you could not secure capital to make proper improvements, and the resultant benefit to the State by means of an absolute grant was so much more, through the increased valuation in taxation, and the increased commerce and trade, that there was no balance between the two whatever.

BY SENATOR MINTURN.

Q. Right there let me ask you a question: What becomes of the consideration that passes to the State for a grant; where does it go? A. Into the state treasury.

Q. For any particular purpose? A. I am not prepared to say positively, but my impression is that it goes into what is known as the general fund of the State, which may be applied to any purpose. Although it may be that it goes into the canal fund. I could not answer that without looking it up, because I have never had occasion to investigate it. In the city of New York an entirely different situation arises. I am talking about grants of land by the State as distinguished from the city.

BY MR. McCARTER.

Q. Would it tax you too much to ask you to look that up and let us know? A. I will be very glad to do it.

Q. (BY SENATOR MINTURN) Does the State still make grants of land under water in front of streets? A. No; and of course, in that part of the present Greater New York, so called, which comprises the Borough of Manhattan, the State has virtually stopped making grants, because the whole thing has been exhausted, but the State is still making grants in the Borough of Bronx and in Queens and Richmond and those grants are all made under the rules, and I have brought here today a copy of the rules.

BY MR. McCARTER.

Q. We would be very glad to see them. A. The rules provide "That the Commissioners of the land office may grant in perpetuity or otherwise, to the owners of the land adjacent to the lands under water, to promote the commerce of this state, or for the purpose of beneficial enjoyment thereof by such owner, so much of the lands under water as they may deem necessary for that purpose. No such grant shall be made to any person other than the proprietor of the adjacent lands—(that is, the upland)—and any such grant made to any other person shall be void, but the private rights of property of individuals shall not be taken away nor impeded without due process of law.

Q. Do you know who constitute the Commissioners of the Land Office? A. I do; I can give you that: the Commission of the Land Office is a very important body, and consists of the Lieutenant-Governor—the members are all ex-officio members—the Speaker of the Assembly, the Secretary of State, the State Comptroller, the State Treasurer, the Attorney-General and the State Engineer and Surveyor. There is in addition to that a clerk who is generally a Deputy Secretary of State, and the work of the State Board is chiefly done, I believe, by the Comptroller and the State Engineer and Surveyor, with the Clerk. The Commissioners of the Land Office publish proceedings every year which can be had, and I hold in my hand the proceedings for the year 1904.

Q. Can you leave that with us? A. I should be glad, if you will see that it is returned to me, because it is part of a very valuable set that I have. I could get you a copy though. I will also send you a copy of these rules.

Q. What are the functions of the Commissioners of the Land Office beyond taking care of the riparian interests of the State? A. They have charge of its interests in lands; for example, escheat lands, and lands which come to the State through sale for taxes,

and a great many other functions, but the sale of land under water has been up to the present moment one of the most important functions of that Board.

BY SENATOR MINTURN.

Q. Do they control the Adirondack lands? A. Yes; in some sense.

Q. Is there a general forestry commission? A. Yes; there is a Commission of Forestry in New York, but it is another Board.

BY MR. McCARTER.

Q. We have interrupted you a little. We have learned about the way they do it generally in regard to the State lands, have you anything further to say; they do not encourage leases, but are in favor of grants? A. Yes; they don't make leases; they make absolute grants, and here are copies of some of the grants.

BY SENATOR MINTURN.

Q. Have they power to make leases? A. Probably the greater power would include the lesser, but as a matter of fact there is nothing of the kind done. Title passes under what is known as a patent, and these patents are absolute conveyances, subject, however, in every instance to a condition precedent, that is to say, for example, that an improvement shall be begun, the improvement specified in the application shall be begun within five years. In case it is not begun, it is customary for the patentee to get an extension of time, which is generally granted.

Q. Has there been any grant of land recently in the Borough of Manhattan by the State? A. The last grant in the Borough of Manhattan, I think, was a grant to the city—that extended its line of ownership to the New Jersey State line in the Hudson river.

Q. That is, for the purpose of extending its pier line? A. It extended it beyond the pier line; it extended to the New Jersey State line, and it was so made for the purpose of rounding out the city's ownership. I might say now, to make this difference between the State and city lands clear, that the City of New York having acquired title to the land under water, began very speedily to grant it to private individuals, because it could not afford to improve it itself in the way it wanted to, and that gave rise within New York City to what may be known as "primary improvements," which are just such improvements which are going on on the New Jersey side at Edgewater, and Weehawken and all the way down along the municipalities of Hoboken and Jersey City; and the city made grants all around the water front at various spots, but it didn't grant some pieces, and those it has held and managed. But in about 1870, or shortly before that time, these private improvements which had

taken place around the water front of the City of New York, owing to the increasing size of steamers and sailing vessels,became inadequate to accommodate commerce, and then the city stepped in under the charter of 1870, by virtue of the powers of the Dock Department, which was created at that time, and began what might be termed the "secondary improvement" of the water front which is entirely different from the primary improvements. In the secondary improvement, the object of which is to secure to the general commercial interest of the port proper landing facilities, not for use of the party owning the upland, but for the general use of the city, the city went in and condemned and has spent enormous sums of money, amounting to nearly a hundred million of dollars. It rents a great part of these secondary improvements, but reserves certain spots for what are known as general wharfage facilities, known as open piers, and bulkheads where barges or any kind of a vessel may come in. But unfortunately there have not been enough of those reserved, and the city is suffering from a lack of open piers, and a bill was passed by the Legislature last year, providing that when piers and bulkheads were so set aside they should not be leased by the city at all without public notice.

BY MR. McCARTER:

Q. This secondary improvement is made entirely through leasehold? A. Let me explain that. If we take, for example, the section extending from Little West Twelfth street to Twenty-third street, North river (I speak of that as I secured the legislation which permitted quick work on this improvement which is known as the Chelsea improvement) it will cost a great deal of money, above $14,000,000, certainly; the property was owned by various private individuals. The Gas Company owned a strip, a storage warehouse owned another strip, and in front of their premises there were these old small piers. The city goes in there and condemns the property. Not only the water front as it existed—that is, the old cribbing—but 200 feet in the rear for what is known as the marginal street, and it takes it, in that particular case, in a short summary method which I could explain in detail. It then builds what is known as a bulkhead wall, which is very expensive, costing about $400 a running foot. Then it constructs the marginal street in the rear, and then builds piers out to the pier line, which at that point is about 800 feet distant.

In the City of New York—there is one impression that I want to correct; it is very prevalent and very unfortunate; and that is, there seems to be an impression abroad that a private individual cannot improve, and that they have got to give up property for

water front improvement. That is contrary to the fact. On the contrary, the only reason why the City of New York started in this secondary improvement was that it was found impossible to get private owners to improve in a proper way, to meet the advancing size of ships; if a private individual will go in and improve his property under the plan adopted by the Dock Department, the city will not take his property. That has been done in the case of several large landowners who could afford to do it. For example, you gentlemen are probably all acquainted with the Starin pier and bulkhead at the foot of Cortlandt street. There was a case of a private owner who was ready to spend the necessary money and went in and improved according to the new plan, and the city gave him permission, and the city won't take that, because there is no object in doing so.

The only reason why the city undertook to improve the water front was because the private owner would not do it, and I wish to call attention to the fact that individuals or private owners can do this without waiting to have the city seize their property.

BY SENATOR MINTURN:

Q. Does the city exercise a general right and control over the character of the improvement? A. Absolutely. Under the City charter of 1870, the Board of Docks, as it was known then—it is now the Department of Docks—there were then four commissioners, and now there is a single-headed commission—was given authority to adopt a plan of improvement. That is, a plan for piers, to fix their length and depth and all that sort of thing. And when that plan, which is known as the "new plan", has once been adopted by the Department of Docks and approved by the Commissioners of the Sinking Fund, then if it came in conflict with any other form of improvement, it took the place of that, the object being to secure uniformity. Of course, the City of Greater New York was not in existence at that time, and there are different plans prevailing in the boroughs, outside of Manhattan.

Q. The legislation is the same in the other boroughs, the same as it is in Manhattan, restricting the owner of the water front and requiring him to make improvements in accordance with a certain plan? A. It is now since the city has been consolidated, but not before. As a matter of fact there was no public ownership at all in Brooklyn; all the ownership was private, but the city now is endeavoring to recover some pieces of the water front, which they claim were not granted before the consolidation. The new plans adopted by the Dock Department have to be approved by the Sinking Fund before they are binding and the Dock Department is run

on an entirely different plan so far as revenue and expenses are concerned, from any other department. It bears no relation to the annual tax levy of the city of New York. The expenses of the department, including the expenses of administration—every penholder—is paid for by the issue of bonds and not out of the annual tax levy; and all the revenues are pledged to the Sinking Funds for the payment of interest or the redemption of these bonds. These funds are administered by the Commissioners of the Sinking Fund, and that is one of the reasons why the Dock Department has been, to a certain extent, dependent upon the Commissioners of the Sinking Fund. For example, if the Commissioner of Docks wants to make a lease, it becomes binding upon the other party but not upon the city until it has been ratified by the Commissioners of the Sinking Fund—unless it was sold at public auction.

BY SENATOR MINTURN.

Q. The revenues of the Dock Department depend entirely upon the amount of money received from the leases of the water front and the docks? A. The revenue of the Dock Department is derived from general wharfage, that is, for example say 50 cents collected from a canal boat, which comes in at these open piers; from leases made to corporations or individuals of improved property, such as, for example, the Cunard Steamship Company; from the receipts from ferries and from certain other general receipts of which there are quite a number of different kinds, such as storage of sand. But the revenues are derived entirely from the receipts taken in through the operation of the water front, and the expenses are met entirely by the issue of city bonds.

BY MR. McCARTER.

Q. Is there any limit in the outside lines for solid filling in these State grants; how far does the State purport to grant? A. The State sometimes grants out to the pier head line, and sometimes it will grant to the center of the navigable stream; but it is provided that these State grants shall in no instance interfere with navigation.

Q. Has there been any agitation in New York, and any public intelligent consideration of this question, that you have got decided convictions about, namely, the relative advantages of leases and grants? A. There has been considerable consideration of the matter at various times, and I am frank to say that before I became Dock Commissioner and studied the matter, I was opposed to State grants, but the moment I got into harness and found out the true conditions, I made up my mind that the decision which the authorities arrived at was correct.

Q. Do you know whether the Commissioners of the land office receive any extra compensation by reason of being in charge of the riparian lands? A. I think not; I am safe in saying they don't because none of the State officers who are members ex-officio of boards receive any extra compensation.

Q. Has that system of riparian grants managed by that kind of a board worked successfully? A. Absolutely; there is no complaint whatever at present in New York. The modus operandi is this: In the first place there are forms prepared for all these things. Applications are made thereon, maps are filed, and appraisers are appointed by the State Board to look out for and advise them about what is to be charged, and then the State Board makes the grant. It is provided that within the city limits, the city is to have notice of every application that is made.

Q. That is provided by the statute? A. Yes, sir; by statute or by the land board's rules that no grant can be made within the limits of the city, unless the city has notice of the application.

Q. And it is true when application is made, before it is entertained or granted, this Board sends appraisers to make a formal appraisal of the lands supposed to be granted? A. Yes, sir.

Q. So that they have a fair appraisal of the lands supposed to be granted? A. Yes; these appraisers report what, in their opinion, is a proper sum to be charged by the State in view of the character of the improvement which is to be made upon it. That is really what the appraisers are to report on. You will find in the report that the appraisers report that the State should charge so and so much for the beneficial enjoyment, and so much for commercial improvement.

BY SENATOR MINTURN:

Q. How much of the whole of Manhattan is under public ownership and how much under private? A. About two-thirds of the whole of Manhattan belongs to the municipality of New York; part of that is what they have never parted with, and the balance of the two-thirds is what they have acquired under condemnation proceedings or by purchases. Here is a table showing the ownership in 1902.

Waterfront of New York City in 1902.

Compiled from the Greater New York Waterfront Survey, Maps, etc.

	Borough of Manhattan. (Miles.)	Borough of The Bronx. (Miles.)	Borough of Brooklyn. (Miles.)	Borough of Queens. (Miles,)	Borough of Richmond. (Miles.)	Totals
Length of shore line of water-front (i. e., measured along bulkhead where property is improved and along high-water mark where property is unimproved)	39.9	105.6	132.3	116.0	51.0	444.80
Length of waterfront including detail around piers, slips, basins, etc	88.2	112.9	197.2	132.0	69.6	599.90
Length of waterfront owned by the City measured along the shore line	23.51	20.60	3.87	0.08	0.03	49.09
Length of waterfront owned by the City measured along details	58.23	20.91	5.59	0.32	0.03	85.08
Old and New Plan combined:						
Length of Improved property measured along bulkhead	.....	.....	.....	.....	.....	.....
Belonging to the City	10.68	1.04	1.45	0.07	.....	13.24
Belonging to private individuals	5.81	(a) 3.42	(b) 20.21	(c) 8.36	(d) 9.33	47.13
New Plan:						
Bulkhead wall built on City property completed to granite facing about	6.	.....	0.50	.....	.....	.....
Old and New Plan combined:						
Length of improved property including detail around piers, slips, basins, etc	.....	.....	.....	.....	.....	.....
Belonging to the City	45.29	1.71	3.17	0.31	.....	50.48
Belonging to private individuals	17.96	(a) 8.82	(b) 55.93	(c) 14.65	(d) 31.43	128.79
City property not improved but available for commercial improvement, measured along high water line, being total City property less Park property	7.14	4.79	.....	0.01	0.03	11.97
City property used for park purposes, measured along bulkhead and highwater lines	5.69	14.77	2.42	.....	.....	22.88
Waterfront owned by the City at Blackwell's and Randall's Islands	5.96	.....	.....	.....	.....	5.96
Waterfront owned by the City at Riker's, Hart's and North Brother Islands.	.....	5.00	.....	.....	.....	5.00

(a) This includes the wharves and piers on U. S Govt. property at Fort Schuyler, i. e., property not belonging to City.
(b) This includes the wharves and piers on U. S. Govt. property at the Brooklyn Navy Yard and Fort Hamilton.
(c) This includes the wharves and piers on U. S. Govt. property at Willetts Point.
(d) This includes the wharves and piers on U. S. Govt. property at Tompkinsville (Lighthouse Dept.) and Fort Wadsworth.

Q. Do you think an agitation could be created in New York to dispose by grants of the land now held by the city of New York, and leased and improved as it is? A. An agitation to have the city sell the property which it has improved?

Q. Do you think it would be popular in the city of New York to make an absolute grant of land under water owned by the city of New York? A. I don't think the people would stand for granting in fee what the municipality spent about one hundred million dollars on up to the present time.

Q. Leaving out the Chelsea improvements and taking the ordinary land under water, on which the old docks exist today, do you think it would be a popular issue with any political party or faction in New York today to submit to the people, the absolute granting of lands under water? A. The city can lease up to 50 years, and I don't think the question is a practical one in New York city.

Q. I put that question for the reason that Jersey City and Hoboken and the suburbs immediately adjoining are practically in the same position that the city of New York is, and while you are arguing, that so far as an absolute grant is concerned, it stands good as to the rest of the State, it does not stand good you say as to the city of New York? A. Permit me to differ with you on one point, and that is this, that the New Jersey shore is not in the same condition as the New York shore is, unless your municipalities or cities are prepared to spend many millions of dollars on it. If you spend that amount then you are, but if you can't do it, then you are not, because you won't accomplish anything. It has been the good fortune of the municipality of the city of New York, to be placed in such a way that it can spend this enormous amount of money, and if you wanted me to go into figures, I could show you that the return on certain of these expenditures does not average over one and one-half per cent. a year.

Q. Would it not be possible today to take a piece of land under water in front of Manhattan, or the Borough of Brooklyn, and lease it to any steamship company desiring facilities of that kind, and insist upon their building their own piers and making their own improvements, under a lease granted by the city of New York? A. Absolutely impossible, utterly impossible, if you insisted that the city's plan be adhered to.

Q. Is not that so in the city of London? A. Utterly impossible in New York to get lessees to improve according to the new plan.

Q. Is it not so in Europe? A. No, in Europe the water fronts of the large ports are managed on an entirely different plan from New York.

Q. Take Liverpool? A. The water front of Liverpool has a very interesting history. Liverpool is situated on a river called the Mersey, which is very much like the Hudson. On one side is Liverpool, and on the other side you have Birkenhead, corresponding to Hoboken and Jersey City. The city of Liverpool originally owned all the water front on the Liverpool side, and managed it, and there was constant complaint about it, and finally Parliament stepped in and created a quasi public corporation known as the Mersey Dock and Harbor Board, and the city turned over all its water front to that Board, and the Board assumed the payment of the bonds which had been issued by the city for the improvements made, and the Board since then has managed and absolutely owned the water front on the Liverpool side. Recently, the Birkenhead side has been consolidated under the same Board. The Board consists of members, some of whom are elected by the people who pay the dock rates, pay the dock charges, and a few are appointed by the Crown, and in fact, the whole water front of the City of Liverpool is managed in effect by men who pay the dock charges themselves.

Q. It is still owned by the Government? A. No, by this corporation; and under what are known as enabling acts or powers, the Dock Board has a right to condemn private property, the same way a municipality has a right to condemn.

Q. But this Mersey Dock and Harbor Board is a public institution conducted under an Act of Parliament for the benefit of the public, and not for private owners? A. Absolutely, without regard to financial remuneration to anybody; and the practical result is this, that the dock charges are always kept at just such a figure as to permit the Board to keep existing property in repair, and allow a certain amount for improvements and aggrandizement. The situation is entirely different from New York. They have a rise and fall of the tide of 18 to 25 feet, so that all ships have to be locked in; whereas, in New York the tide is only from 4 to 5 feet, so the character of the improvement is entirely different.

BY ASSEMBLYMAN BARBER.

Q. Did I understand you to say that Mr. Starin is the owner of that property that he improved? A. The Starin Transportation Company, I believe is the record owner. There are other pieces of private improvement. There are two piers at the foot of Park Place, which are owned by the Rhinelander Estate. The Pennsylvania railroad owns some property which they have improved.

Q. Did they purchase these lands from the city? A. They got these lands by city grants before 1870, because since 1870, since

the city began to make improvements itself, it ceased to make grants of that kind.

Q. Has the right of the state to dispose of these lands ever been questioned? A. Oh, yes; the right of the city to condemn property and rent it afterwards was attacked on the ground of not being constitutional, and the Court of Appeals held that the improvement was of such a nature as to come within the definition of a public use.

Q. Then the right of state ownership has been practically established by the courts? A. Nobody has ever questioned the fact that the state of New York owns the land under water which was not the property of private individuals or the property of the city, but the state does not own land outright; it cannot do what it pleases with it. It cannot grant that land to Tom, Dick and Harry. It can only grant it, if it is going to grant it at all, to the riparian owner, the upland proprietor, and the practical effect is, that the state owns it, so to speak, subject to the easement of the riparian proprietor. The state cannot make a grant under water—I think I read that to you just now—which in any way interferes with the rights of access of the upland proprietor to his property. That is a common law right which is recognized perfectly. If the state wants to do that or does it, it has got to condemn that right of access of the upland proprietor.

BY MR. McCARTER.

Q. I think I understood, although Mr. Duffield did not, that you said that the state will remit from a figure, or take into consideration in fixing a figure for a grant, the fact that the proposed purchaser seriously intends to improve the property and bring manufactories or other industries of that kind there? A. There is no question about the state taking that into consideration; it does not remit, but it takes that into consideration in fixing the price.

Q. Is there any fixed schedule of prices? A. There are no grants made under fifty dollars; some expense attends upon the method of procedure, and, of course, there is always an attempt made to cover the expenses, but there is never an attempt made by the State to make anything out of its water front property, quite the contrary in contradistinction to resultant benefit to the State.

MR. McCARTER.—I am sure we all feel very much indebted to Mr. Hawkes for the intelligent and discriminating description he has given us of the water front of New York. I would say that I have the papers at my office in Newark, and if you will send me a copy of the rules, I will be very much obliged to you.

Q. I understand you have written a booklet on the subject of city ownership of land in New York city? A. No; I endeavored to get out a report on this and other subjects while I was Commissioner of Docks, but it was never published, as intended, but the real estate record and guide published an account of a lecture delivered on this topic.

Q. During the course of your remarks you said something about the city of New York claiming the land under water to the Jersey shore; do I understand you to mean the Jersey shore front or the center of the river? A. There was a convention between the two states, I don't remember what year, in which that matter was settled by agreement; but the city of New York did claim ownership of the water front to high water mark, if I am not mistaken.

Q. It did at one time; but now it claims it only for the exercise of police powers. A. I don't think it claims it even for that purpose; I don't think it claims it beyond the line of the middle of the river.

Q. You send your police boats and your fire boats over? A. I think they come over as a matter of courtesy—that is, as far as the fire boats are concerned.

Q. What about the police boats? A. I don't think they come over except as a matter of courtesy. I don't think the city of New York after this agreement can exercise any jurisdiction except to that line.

Q. My information was that the police powers were exercised by the city of New York over the entire water of the Hudson river. A. If that is so, it must have been a reservation in the convention but I have never examined the statute.

Q. Have you any instance in mind where the state of New York ever made a grant to the center line of the river? A. Not except to the city. My impression is that the city now owns to the state line under the Hudson. There have been a great number of those grants.

Q. When the State makes a grant now, does it make it between high and low water, or to the bulkhead line? A. Under ordinary circumstances, it would make the grant to the pier head line, as laid down by the Federal Government—not the State pier head line.

SENATOR MINTURN.—I want to express the thanks of the Committee to you for coming here.

A. Let me also say, that within the limits of Greater New York the State Board cannot grant land under water in front of streets which have been opened by the city or dedicated. This protects

the city and keeps for it places around the water front where it can build piers for public convenience.

At this point a recess of one hour was taken.

Water Front Property Within the Territorial Limits of Greater New York.

From an address by Hon. McDougall Hawkes.

Appraisals and expert testimony of values—Condemnation Proceedings—Ownership in the various boroughs—Leases—Purchases and Sales—Land under water—Grants—Improvements—Management, and other topics of interest to real estate agents and lawyers.

Water Front Property.

Within the Territorial Limits of Greater New York.

From an address by the Hon. McDougall Hawkes, Commissioner of Docks of New York in 1902 and 1903, delivered before the Real Estate Class at the West Side Branch of the Y. M. C. A. on Tuesday evening, March 28; he said in part:

At the conclusion of a hearing in a recent condemnation proceeding of water front property, at which I was called to testify as an expert on values, your director, Mr. Neill, was good enough to ask me to speak before you on such subjects of practical interest to you in connection with your course of study of New York City Real Estate, as have come frequently under my observation in the course of law practice, and the following topics have been selected:

Character of water front property in general in this city; its extent.

Ownership—private—public—how each arose.

Improvements on water front property—their cost—tidal differences.

Municipalization—"Old Plan"—"New Plan."

Limitation on improvements—harbor lines—approval of plans for private improvements.

Acquisition—sale—leases—condemnation proceedings—expert testimony of values.

Units of measurement of values in appraisals—conjunctive value.

Management—Special Kinds of Usage—Taxation—Maps—Records.

It would be impossible, in the short space of an evening, to treat,

even in the most cursory manner, of the many matters connected with our water front of which knowledge would prove of service to you ; therefore, the subjects, which have been selected are confined entirely to those which you will find, it is believed, of immediate practical value ; nor is it even possible to go into many of the refinements of the subjects selected, refinements which must be carefully taken into account in estimating on values, and in determining, in management and development, the most advantageous course for your clients to pursue; in fact to any one making a specialty of water front property, in forming opinions of values by deduction from existing and former conditions, not only will general knowledge of water front engineering and law prove of great assistance, but special knowledge also of city finance and administration, and of the policy which the city has pursued in water front matters in Manhattan will be of great benefit. If you should proceed to a study of city finance, you will find one of its most important divisions, the city's sinking funds (which have for some forty years borne a close relation to the development of the Manhattan water front) very intricate ; in short, the difficulty of obtaining knowledge of water-front matters which your director alluded to in asking me to speak before you, is of itself evidence of their frequently highly technical character ; so very careful study, before arriving at conclusions in water-front questions, cannot be too strongly urged. With this word of caution we will now proceed with the topics selected for discussion this evening, and first let me tell you what is generally meant by the expression "water front property," always bearing in mind that we are talking of property within the territorial limits of Greater New York, and are speaking of it from a practical real estate, rather than a strictly legal, point of view.

Character of Water Front Property in General in this City.

Of course, in a general way, water front property refers to real estate, improved or unimproved, bordering upon navigable waters and upon which are lines of high and low water mark, indicating the difference of the level of the water at the ebb and flow of the tide, which varies in different seasons and according to the direction of the wind and for other reasons, in consequence of which when high water mark or low water mark are spoken of they should be understood, unless otherwise specified, to mean the average high or low water mark ; that is to say the mean of the greatest height to which the flood tides brings the water, or the mean of the lesser

height at the ebb of the tide, during a certain period such as a year; but in many instances the term "water front property" is used to distinguish rights which exist in connection with improvements along the water front, such as a bulkhead right (that is, the right to collect cranage and wharfage along a stretch of water front which has been improved by a bulkhead) or pier rights (that is, rights of cranage and wharfage at a pier built out over land under water but connected with upland in the rear of the water line), and these "water front property" rights may belong to an owner who is not the proprietor of uplands in the rear.

There are also "water front property" rights of still different character, but generally those rights which you will find most valuable are the rights to the use of land under water for the support of piers and platforms, and pier rights and bulkhead rights with which pass, sometimes, rights of passage over land in the rear, and then there are certain "water front property" rights which are particularly valuable in many instances, this particular value arising from a combination of bulkhead or pier rights, with the ownership of upland which may even be physically separated from the line along which frontal rights exist by a marginal street, quay, or wharf; such a joining in ownership of upland with frontal rights gives to these frontal rights frequently an unusual and additional element of value which is known as the conjunctive value of the bulkhead rights, the pier rights, etc., etc.

In some instances these "water front property" interests arise from statutory provisions, in other instances from grants and similar instruments, and in other instances still, such as in the case of a right of access to land reaching to the low-water mark, from ancient customs which may be said to give rise to Common Law Water Front Property Rights. It some instances the physical ownership of a bulkhead or pier may be in one person, and the rights to cranage and wharfage at the bulkhead or pier in another; the owner of pier rights may own the land under water on which the pier stands, or he may only own the pier, as distinguished from the land under water, or he may only have the rights as distinguished from the structure of the pier; frequently the ownership of rights carries obligations to keep in repair, etc.

Extent of the Water Front.

Now let us consider the extent of the water front within the limits of Greater New York, from which you will at once apprehend the importance to you of the study of this subject, and you will, I

WATERFRONT OF NEW YORK CITY IN 1902.
COMPILED FROM THE GREATER NEW YORK WATERFRONT SURVEY, MAPS, ETC.

	Borough of Manhattan. (Miles)	Borough of The Bronx. (Miles.)	Borough of Brooklyn. (Miles.)	Borough of Queens. (Miles.)	Borough of Richmond. (Miles.)	Totals.
Length of shore line of water-front (i. e., measured along bulkhead where property is improved and along high-water mark where property is unimproved)	39.9	105.6	132.3	116.0	51.0	444.80
Length of waterfront including detail around piers, slips, basins, etc.	88.2	112.9	197.2	132.0	69.6	599.90
Length of waterfront owned by the city measured along the shore line	23.51	20.60	3.87	0.08	0.03	49.09
Length of waterfront owned by the city measured along details	58.23	20.91	5.59	0.32	0.03	85 08
Old and New Plan combined:						
Length of improved property measured along bulkhead	.....	.....	.....	.....	.....	.....
Belonging to the city	10.68	1.04	1.45	0.07	.....	13.24
Belonging to private individuals	5.81	(a) 3.42	(b) 20.21	(c) 8.36	(d) 9.33	47.13
New Plan:						
Bulkhead wall built on city property completed to granite facing, about	6.	.....	0.50	.....	.....	.....
Old and New Plan combined:						
Length of improved property including detail around piers, slips, basins, etc	.....	.....	.....	.....	.....	.....
Belonging to the city	45.29	1.71	3.17	0.31	.....	50.48
Belonging to private individuals	17.96	(a) 8.82	(b) 55.93	(c) 14.65	(d) 31.43	128.79
City property not improved but available for commercial improvement, measured along high-water line, being total city property less park property	7.14	4.79	.....	0.01	0.03	11.97
City property used for park purposes, measured along bulkhead and high-water lines	5.69	14.77	2.42	.....	.....	22.88
Waterfront owned by the city at Blackwell's and Randall's Islands	5.96	.....	.....	.....	.....	5.96
Waterfront owned by the city at Riker's, Hart's and North Brother Islands	.....	5.00	.....	.....	.....	5.00

(a) This includes the wharves and piers on U. S. Govt. property at Fort Schuyler, i. e., property not belonging to city.
(b) This includes the wharves and piers on U. S. Govt property at the Brooklyn Navy Yard and Fort Hamilton.
(c) This includes the wharves and piers on U. S. Govt. property at Willetts Point.
(d) This includes the wharves and piers on U. S. Govt. property at Tompkinsville (Lighthouse Dept.) and Fort Wadsworth.

am sure, be surprised to find that within the limits of Greater New York, including, of course, all the boroughs, the water front is in the neighborhood of 445 miles, which is about the distance between Manhattan and Buffalo. No other port in the world has such an extent of water front, which fortunately, in a large measure, is of such a physical character as to be susceptible of easy commerical water front development. The annexed table shows the water frontage of New York, and its ownership which I shall allude to in a moment, and was compiled from the general water front survey of Greater New York and maps constituting records, etc. (See next page.)

In the table allusion is made to "Old Plan" and "New Plan" and to "Bulkhead Walls"; these will be explained when we reach the subject of "Improvements on water front property."

Ownership.

The ownership of the water front varies greatly according to the boroughs, the municipality having comparatively little property except around the Island of Manhattan, which forms the old city and county of New York. Around the Bronx, Queens, Brooklyn and Richmond boroughs ownership is generally in the State of New York or private individuals or corporations, though this ownership in many places has not yet been finally determined by decisions of the courts in legal proceedings which have arisen through claims made by the municipality as successor to the old townships now incorporated in the city limits.

In Manhattan, as will be seen by the table, the municipal ownership is about three-fifths of the water front, and it is in this borough that the water front has attained its greatest value and where the greatest congestion exists. I should like to give you in detail an idea of water front titles in the various boroughs, but this is a strictly legal question, and though interesting and generally little known, would take up an evening of itself and lead us away from the subjects selected for tonight, so that I must confine myself to saying that around Manhattan the Dutch West India Company, claiming ownership, made the earliest transfers of title, and a map exists of such of these transfers as were situated below Wall street; all further transfers by this company of course ceased with the first occupation of New Amsterdam by the British (1665), and in regard to this occupation and the subsequent change of sovereignty from the British Crown to the People of the State of New York, it must be borne in mind that, by force of treaties, statutes and well-established

principles of law, all the land which in 1775, the beginning of the War of Independence, belonged to the Crown of Great Britain became vested in the People of the State, and that with respect to lands to which titles before that had been legally acquired by individuals, either from the British Crown or under Dutch rule prior to 1665, the change from Dutch to English sovereignty and through the Revolution from the Crown to the People of the State, effected no forfeiture of itself, of the individual ownership in such lands.

Immediately upon the assumption of English sovereignty, the city of New York received its first English Municipal Charter known as the Nicoll Charter; this was followed by the Dongan Charter (1686), the Cornbury Charter (1708) and the Montgomerie Charter (1730) in all of which last three charter grants of water front property were made to the municipality by the Crown, these grants being, however, subject to grants already made by the Crown to private individuals. The first of these grants to the city, and which was in the Dongan Charter, was of the land between high and low-water mark all around the Island of Manhattan and confirmed to the municipality ownership of the first docks built—which had been constructed in the city at the foot of what is now Broad street, through which in early days was a canal, and were known as the East and West Wet Docks, into which docks, what would now be called a pier, but which was then called a bridge, extended.

The Cornbury Charter gave to the old city of New York ferry and other rights along the Brooklyn shore, and the Montgomerie Charter gave to the city the land under water in the Hudson river to a distance 400 feet beyond low-water mark, from a little stream called Minetta rivulet (emptying into the Hudson at what is now about the foot of West Houston street),down to the Battery ; and thence, excepting a short stretch which is in front of the then British Fort George, up the East river as far as Corlears Hook.

After the Revolution the State made various grants to the city around the Island of Manhattan, and some grants to private individuals, but most of the private ownership around Manhattan arose through direct grants made in turn by the city of property which it had thus received from the Crown or State of New York ; and the bulkhead rights and pier rights, which are now being condemned as the work of municipal improvement of Manhattan's water front progresses, came generally from grants by the city or from authority given by the city under various statutes (such, for example, as the Law of 1798) to private riparian owners to build out piers over

land still owned by the city, or to construct bulkheads, with rights of cranage and wharfage on these piers, and against these bulkheads, to those paying for their construction.

In connection with the foregoing it is interesting to note that the original line of high-water mark along the East River was Pearl street and along the North River, Greenwich street.

Concerning ownership in the other boroughs of the city. In the Bronx water front the original titles to land in private owners came through grants from Govs. Nicoll, Dongan, etc., and Letters Patent such, for example, as the Pelham grant issued to Thos. Pell in 1666, and through grants from the townships of Morrisania, West Farms, etc., of property previously granted to them.

In Brooklyn and in Queens there were a number of Colonial grants made to the inhabitants and towns, such, for example, as the Breuklen patent (from Gov. Nicoll), Oct. 18, 1667, covering the Gowanus, Bedford and Wallabout districts. The towns, in turn, after receiving their grants frequently divested themselves of titles by grants of water front to private individuals; but lands under water within the old town limits on Long Island were not as a general rule conveyed by the towns until of recent years when they became of considerable value and were frequently sold.

Under the original patents the towns obtained havens, harbors, creeks, marshes, waters, rivers, lakes, fishing, etc., and such of the property rights as were acquired by the old town and not ceded by them—now belong to the greater city. The old city of New York made grants to owners of upland along the Brooklyn shore, of land under water in front of their property.

In Richmond Borough, as the Colonial patents on Staten Island appear to include no water grants, the only way generally in which the city can at the present moment own property, would be by a grant from the State of New York to the old townships and villages within Richmond county, or through condemnation proceedings in street openings taken by these authorities, though the highway laws under which the roads in Richmond county were opened did not vest an absolute public ownership in fee in the beds of the roads and streets; private ownership in this borough has therefore arisen generally by direct grants from the State.

In all the boroughs the United States Government has acquired water front properties (such as the barge office site in Manhattan, the navy yard in Brooklyn, the light-house station in Staten Island, Fort Schuyler's site in the Bronx) by grant coupled with a ceding by the State to the Federal Government, of jurisdiction over the property acquired.

Improvements on Water Front Property—Their Cost—Tidal Differences.

Let us now consider the two principal plans of water front improvements adapted to shipping in general, viz., the basin plan and the pier plan ; and if we look to see in which ports each has been put into operation, we will find that in those ports where there is a large tidal difference the basin plan is adopted, while in those ports where the tidal difference is small, say, below 8 feet, the pier plan has been adopted, so that a plan of water-front improvement depends in reality upon the tidal differences in a port. The most typical example in the world of the basin plan is to be found in Liverpool, where there is a rise and fall of the tide varying from 18 to 25 feet, the system in brief consisting of a number of basins in which the water and ships are allowed to enter when the tide is full. As it begins to ebb, locks similar to canal locks but much stronger, are closed and the depth of water obtained in the basin at high tide is thus preserved for the flotation of the ships which have entered, until a new high tide makes it possible to again open the locks, so that ships are limited to a very small part of the day in which to enter and leave basins. This system requires the most solid and expensive form of masonry construction, and is the most costly plan of improvement which can be adopted, but of course presents a handsome appearance and is lasting and provides fire-proof structure. The other plan consists in building a marginal quay, wharf or street with a bulkhead (either crib or a wall) from which, generally at right angles, piers, built on cribs or spiles, project towards the channel. This system is the one adopted in New York, where the rise and fall of the tide is between 4½ and 8 feet, generally 5 ; the pier system is constructed at much lower cost than the basin system, and has a number of advantages, among others that of elasticity to ships lying against piers, and is economical of wharfage room ; its chief disadvantage is the generally inflammable character of the sub-structure, as spiles are still generally of wood, though ferroconcrete piling, which is absolutely fireproof and which has been in use in Europe for some time, is beginning to be considered for water front work in this country.

The most expensive feature of the pier system as used around Manhattan today is the building of the bulkhead wall of which there are over twenty different types, the cost of which may be generally estimated from $300 to $450 per running foot, while the crib bulkhead, which characterized the "Old Plan," may cost as low as $30 a running foot, and is still used in many places ; there

will be lantern slides exhibited to you here this evening before we close, to show the proper form of pier construction and bulkhead wall construction and other matters best explained by illustrations. The tendency of the weight on the top of a marginal street is to push the bulkhead wall out or to overturn it; hence, various arrangements of platforms have been devised to suit local conditions, and to change the direction of this overturning force, known to engineers as a thrust; and it is to these various attempts to change the direction of the thrust, and the different character of the bottom at various places, that the different types of wall are due.

Dredging is the first operation in the building of the bulkhead wall; this is known as crib dredging, to distinguish it from dredging alongside piers and bulkheads already constructed to maintain a certain depth of water, which is known as mud dredging. As to the cost of the construction of piers, this varies very much with the price of materials, such as spiles, and particularly with the length of the spiles required to sustain the pier.

Municipalization—"Old Plan"—"New Plan."

Previous to 1870 piers and crib bulkheads had been built around the water front of Manhattan according to the "Old Plan," which had been devised in some instances by the City's Street Commissioner; in other instances as a direct result of action by the Legislature of the State; and had become in size and character inadequate to meet the growing demands of the commerce of the port, in consequence of which when a new City Charter was adopted by the Legislature in 1870, provision was made for a separate Dock Department to have charge of the water front, which was known in the Charter as the Board of Docks, and this Board was empowered under the laws of 1871 to adopt new plans for the improvement of the water front which, when they were once ratified by the Commissioners of the Sinking Fund, became binding in regard to new construction, and it is under this "New Plan" that the work is proceeding today, though the old Board of Docks has been replaced by a single commissioner at the head of the department.

Limitation on Improvements—Harbor Lines—Plans for Private Improvements.

The same constant tendency which exists among abutting owners to encroach on the street lines, exists among shore owners to encroach on the beds of navigable waters; hence it is necessary to establish what are known as harbor lines, settling a point

beyond which solid fillings cannot be put (i. e., bulkhead lines) nor platforms, nor piers built (i. e., pierhead lines). These lines are now established by the Federal Government, but were formerly laid down in some instances by the city and some by the state, and in 1857 a Harbor Commissioner laid out a general set of lines for the port of New York as it then existed. Moreover, plans for improvements, even of private property, have to be passed upon by the authorities, and all of this should be carefully borne in mind by prospective purchasers of water front property, particularly of land under water.

Acquisition—Leases—Sales—Condemnation Proceedings—Expert Testimony of Values.

Sales of water front property around the Island of Manhattan, of course, are becoming fewer and fewer, particularly in the lower half of the island, as municipalization proceeds, but in the other boroughs municipalization has not taken place to any great extent, and consequently there is considerable field therein. What is meant by "municipalization" is acquisition by the city of private water front property rights and the subsequent improvement of property taken, according to the "New Plan," an acquisition which may take place either by sale to the city or by condemnation proceedings by the city, under provision of various acts of the Legislature. These proceedings consist in brief of a petition which is presented to the court by the city praying for condemnation of the property for public purposes; appointment by the Court of Commissioners of Estimate and Appraisal to pass upon the value of the property to be taken; presentation by the owners of the rights, of proof of their title and of the value of the property (which the city seeks to acquire), this latter being done through expert witnesses who testify as to its value, their eligibility to testify as experts being based upon their knowledge of water front values, which may be acquired, as for example, from experience derived from actual purchases and leases of water front property made by the expert; finally a report by the commissioners of the value.

Referring to leases it should be borne in mind that they may be obtained of city property for long periods up to fifty years, and that since the abolition of the old Board of Docks they have to be ratified by the Commissioners of the Sinking Fund before they are binding on the city.

Units of Measurement of Values in Appraisals—Conjunctive Values.

In making appraisals it is customary to adopt units of measurement differing from those for ordinary real estate plots. For land under water the unit is the square foot, for bulkhead rights the running foot; in regard to pier rights the units of measurement differ according to the special circumstances governing the case; as, for example, whether bulkhead rights go with the pier rights, in which case the unit would generally be the square foot of controlled area; in other cases the lineal foot of water frontage occupied, or the lineal foot of wharfage room; in other cases still, the square foot of pier area, etc., and all units may be given a very greatly added value through what has heretofore been explained as the conjunctive value, and for other reasons, for example, as to whether or not there is a right to shed the pier; the location of the pier and many other points have to be considered, including the legal character of the rights in each particular instance.

Management—Special Kinds of Usage.

It is necessary to bear in mind, in regard to water front property the necessity of managing it from the point of view of the water front and not from the point of view of upland property, if the highest return thereon in the way of revenue is to be obtained. This is very important, and in many sections of the city you will find two pieces of property similarly situated, one yielding a high return because this fact has been kept in view, and the other yielding comparatively little, much to the detriment apparently of the fee value, until the possibilities are carefully studied from the point view of water front usage.

Special kinds of usage have developed around the water front in various localities; some places have become centers for the distribution of railroad freight, others for the great steamship lines; in one spot on the North River the hay trade congregates and in another the brick trade; peculiar arrangements for landing may be found in the railroad transfer bridges, in the ferry slips, in the ice bridges; these and many particular kinds of usage as the dumping boards (for the disposal of what is technically known as cellar dirt, generally consisting of excavations, etc.) and centers of trade, demand special study, and the relationship which the water front bears to the markets of the city such as the oyster basin at the Gansevoort market (New West Washington market) and the Wallabout basin in front of the Wallabout market in Brooklyn, will prove interesting.

TAXATION.

Water front property rights are subject to taxation just as upland real estate is taxed, though leasehold property of the city is not taxed by it.

MAPS—RECORDS.

Before closing, it is necessary to give you some information on the subject of water front maps and records.

The chief water front map of the city is the Greater New York water front survey arranged in sheets. This has been published on a reduced scale and I hold in my hand one of these published sheets; next in importance to the present water front survey is the McClellan survey of 1870, and the maps formerly compiled under the direction of the Street Commissioner, of which there are about 300 in thirteen volumes, many of which refer to the water front, and of these one of the most useful is the Randall map, made in 1820 by John Randall, Jr., pursuant to a resolution of the Common Council to show the location of the farm lines, topography of the land, streams, ponds, water courses, etc.; in using this map dimensions have to be obtained by scale; it gives high and low water marks. There are also a large number of old shore maps and many maps dealing with certain particular water-front sections of the city, which maps have been carefully examined and will be found of great service for special purposes. Nor should water front records of tides and currents be overlooked, the records of tidal heights being of service in establishing on a piece of property the mean lines of high and low water marks.

After recess.

Senator Minturn called the Committee to order at two o'clock p. m.

THE ATTORNEY-GENERAL.—I would like to call the attention of the Committee to the fact that the minutes of the Riparian Commission disclose that on May 12, 1904, Mr. Vredenburg and Mr. Earl appeared and requested a re-execution of the license of the New Jersey Shore Line Railroad Company in view of the fact that the license of March 31st had been executed under a section of the act of 1873 which was repealed under the provisions of an act concerning railroads, Revision of 1903. The Board granted the same and executed a new license.

So that it appears that not only was this old license given for $400, on the amended application but that upon the representation of Messrs. Vredenburg and Earl to the Board that the 36th section

of the railroad act had been repealed by the revision of 1903, gave a new one for no new consideration at all.

SENATOR MINTURN.—Is there not any such section in the 1903 law?

THE ATTORNEY-GENERAL.—There is one that corresponds with it and I do not know why it was necessary to give a new license, but apparently it was asked for and immediately given.

JOHN J. FARRELL, sworn. Examined by the Attorney-General.

Q. You were formerly a member of the Riparian Commission? A. I was.

Q. During what time did you serve? A. From May 1899 to May 1904, five years.

Q. You were appointed by whom? A. Governor Voorhees.

Q. Who were your associates? A. Willard C. Fisk, William Cloke and John I. Holt.

Q. Do you recall the first meeting that you attended of the Board after your appointment upon the commission? A. I do.

Q. What steps did you take to ascertain the situation of affairs, concerning the discharge of your duties as commissioner? A. The first meeting I attended I believe was on May 29th, 1899, about two weeks after my appointment; I was informed by the Governor, who was present, and the Vice Chairman, of the custom in vogue and the methods followed which was, in substance, that all lands were disposed of either by grant in fee or lease, convertible into a grant; also as to how many members were supposed to vote on the question. I stated at the time that if my vote was required therefor no grant in fee would be made.

Q. Why was that? A. Because I thought it was contrary to the best interests of the school fund, to which the revenue derived from this land was supposed to, and did, go.

Q. Your view was what, in favor of a license? A. I favored a license.

Q. From the very beginning? Q. Yes, from the very beginning.

Q. And you do still entertain that view? After your five years' experience? A. I do. I think it is the only practical way in which the lands of the State should be handled.

Q. Before going on with your experience I think it would be well at this time to give the committee your reasons for your firm conviction which you entertained during all your term of service and still entertain in that the State should not make a positive grant, but should give leases. Will you explain that? A. My reason was

that the income would be much larger eventually. The plan I suggested was put into a more concrete form by Mr. Fisk who stated that he had had in mind such a plan for several years, to make a term grant at a graduated rental, a rental which would attract rather than keep away enterprises that might desire to come into the State, by making the terms during the first five years, or the constructive period, merely nominal, the terms graduated according to the value during the second, third and fourth periods of five years, twenty years being the time suggested then as the limit, which, on the whole, would make a rental which would be about equivalent to that then prevailing which the State was receiving, or would receive if the principal sum had been named on that particular term under the rules then existing with a proviso for a renewal at the end of that time. I was actuated in that desire solely by what I knew had happened theretofore. From what I had learned and knew from actual experience, a large part of the most valuable portion of the State's riparian domain had been aliened for practically nothing. At the time I went into the Board I thought it was never too late to mend and I thought it would be a mighty good thing to start the plan then, if it had not been done prior to that time.

Q. Yes. A. The Commissioners approved the idea but the counsel of the Board who was present at the time expressed doubt and because of his doubt I suggested that inasmuch as the Legislature invariably appealed to the Attorney-General when in doubt that it would be wise for him to refer the matter to the Attorney-General and see whether or not it was not within the province of the Board to make leases upon these terms. The Board went ahead and approved of the plan on its own account, but made no leases under, awaiting the opinion of the Attorney-General. During that time, several large manufacturing concerns had applications pending; I recall one very well, the Babcock and Wilcox Company, one of the largest concerns that came into the State during my time, and it was willing to accept a lease on those terms.

Q. Those terms included what, in reference to renewal and appraisal and so forth? A. At the end of the twenty-year period a renewal was to be made based on the value of the land at that time; not on the value of the improvements, but on the value of the land, twenty years after the time the first rental was fixed. In case of a dispute between the lessee and the Board, an arbiter was to be chosen; if they were unable to agree upon an arbiter the matter was to be left to the Chancellor; and the counsel of the Board stated at the time that in his opinion we had no right to adopt a

plan of that character, and it was then the question was referred to the Attorney-General.

Q. Before taking up the Attorney-General's report, was this kind of lease you are talking about the same lease that the Board had been making under the statute? A. No; under the statute as then interpreted by the Board they were making a lease, which, to my mind, was nothing more or less than a perpetual option.

Q. Why was that? A. Because it was a lease convertible into a grant at the option of the holder of the lease.

Q. Your idea was to make a lease for twenty years with the right of renewal? A. For twenty years with the right of renewal.

Q. At a sum to be agreed upon, and if not agreed upon, to be arbitrated upon? A. Exactly.

Q. And that sum to be fixed at the end of the twenty years was to be based on the then value of the land without regard to the improvements? A. Yes; without regard to the improvements.

BY SENATOR MINTURN.

Q. You say the lease contained a perpetual option without— A. Without any regard to the rights of the State; that is under the act of 1871.

Q. Under the form of lease which the Board then executed? A. Under the form of lease they then executed; and during the entire time that I was there, that was the method that appeared to prevail.

BY THE ATTORNEY-GENERAL.

Q. What happened during the six months that expired between the time that this question was submitted to the Attorney-General and the time you got the opinion from the Attorney-General? Was any business done at all? A. No; the Board met and considered applications, but no grants and no leases were made.

Q. I have in my hand the annual report of the Riparian Commission for 1899 which recites that, "The place of Hon. Miles Ross, who was compelled by ill health to resign before the end of his term, was filled by the appointment of John J. Farrell, Esq., of Newark, the remainder of the former Board being re-appointed.

"In connection with the matter of the establishment of new enterprises on the shores of the State, and the desire of the Board to foster the same, the subject of a new form of conveyance has been discussed by the Board and hearings had, at which parties interested in the more valuable water front of the State have appeared. The end desired was to secure to the State a more advantageous disposition of the State's lands, and at the same time secure to the intending purchaser such protection as would remove any

objection or barrier to the successful development of any commercial enterprise. Upon the submission, however, of the proposition and points involved to the Attorney-General, he decided that under the existing law the Board had no power to make conveyances embodying the features suggested. The opinion is as follows :"

Is this the opinion to which you have just referred? A. Yes, sir.

Q. I will read this :

Trenton, N. J., Nov. 1st, 1899.

GEORGE L. RECORD, ESQ., Attorney for the Riparian Commission of N. J., Jersey City, N. J.

Before reading that can you explain to me why so much time elapsed between the time this question was bruited in the Board and the time you heard from the Attorney-General in regard to it? A. According to the Attorney-General, he had never heard of the fact that the Board wanted his opinion until I called his attention to it in the hall of the State House one day in October of that year, when I happened to meet him and asked him why it was we hadn't received an opinion in regard to the new plan of lease the Board intended to put in operation, and he told me it was the first he had heard of it, and, in a brief way, I explained to him what it was, and he told me in the same way, but he said to me that he preferred not to convey his opinion to the Board in that way and would rather write to Mr. Record, and he did so.

Q. This opinion was the result of that conversation? A. It was the result of that conversation.

Q. How much time elapsed between the time that matter was bruited in the Board and referred to the Attorney-General and the time you got the opinion? A. About six months.

Q. I will now read the opinion :

Dear Sir :—I understand that the Riparian Commission have under consideration a plan for leasing the State's lands under water for terms of years, with a proviso that at the expiration of the term the property leased may be re-valued under an agreement, contained in the lease, that the Commission will submit the matter of valuation, if there be any dispute, to the arbitration and ultimate decision of an umpire, and that my opinion is desired by the Committee as to whether such a form of lease as that herein indicated can be lawfully made by the Commission.

I am of the opinion that the Commission had no power to make

any lease containing an arbitration feature and thereby agree to submit the question of the value of the State's lands to the arbitrament of a third person. The Commissioners are agents of the State. They are not owners of the State's title. Their power is limited and defined by the Statutes. [Referring to the statutes.] These references, I think, clearly indicate that the power to fix and determine the amount of rent or the price to be paid for a grant of lands under water is vested in the Commission as the agents of the State. There is no authority conferred by the Legislature upon the Commissioners to substitute any other agency for the purpose of determining the price of land or its rental value. The Commissioners cannot even agree to accept a capital sum in lieu of annual payments without the authority of the Legislature acting for the State which authority was expressly conferred upon the Commissioners by the act of March 17, 1870 (Gen. Stat., p. 2796, sec. 46). I have no doubt, whatever that any provision in any lease in contemplation, by which the amount of rent is to be settled by arbitration, cannot lawfully be made by the Riparian Commissioners, nor have I any doubt that the Commissioners may lease the State's land for such term and at such rental as the Commissioners may fix and determine. In making such leases the interests of the State would seem to require that the terms should be long enough to induce the lessee to make improvements, and not so long but that the State would have an opportunity, in a reasonable time, to avail itself of the increased value of its lands resulting from the improvement of its tenants, and thus increase its income from rents.

Very truly yours,

S. H. Grey.

Attorney-General.

Then the report continues :

Thereupon the Board passed the following resolution :

Whereas, this Board has had under consideration a change in its policy whereby the practice hitherto followed of giving absolute grants and perpetual leases, convertible into grants, should be discontinued, and in the place thereof a plan could be adopted of giving leases for a long or perpetual term, with no provisions for conversion into grants, but upon such annual rental to be fixed from time to time by arbitration between the State and the lessees ;

And Whereas, This Board had been advised by the Attorney-Gen-

eral, and by its counsel, that the Board has no power under the law to adopt and carry out such proposed plan ;

Therefore, Resolved, That the further consideration of the said proposed change in the policy of the Board be postponed until the powers of the Board shall be enlarged by act of the Legislature, and that the Board proceed with the applications and business before it, in accordance with the practice hitherto followed.

Q. You recall that resolution ? A. I do.

Q. Was any change in the resolution afterwards had ? A. None that I can recall.

Q. They then proceeded, I suppose, after that to make perpetual grants as well as leases ? A. Yes.

Q. What have you to say as to the attitude you occupied generally in reference to the making these grants, the rates they were made at, and so on ? A. I have very little to say as to what my attitude was. When I found it was impossible to prevent the making of absolute grants I endeavored to do the next best thing in my judgment and make the price as near prohibitive as I possibly could in order to prevent the making of grants until such time as we did secure the desired legislation.

Q. Was anything said by anybody connected with the Board, either as a member or as counsel about not doing any business, or about your attitude preventing business being done if your idea was carried out ? A. That was some time prior to the opinion of the Attorney-General, to the letter having been received from the Attorney-General.

Q. What was that ? A. That was a suggestion by the counsel of the Board that our attitude was a wrong one ; while the theory might be all right the practice would be bad.

Q. Why ? What reason did he give ? A. The reason he suggested was that if at the end of the year the Board made its annual report to the Legislature without showing any receipts, the Legislature might feel that the usefulness of the Board had ended and himself and myself, and, I suppose all the other members, might lose their little stipend of fifteen hundred dollars a year.

Q. Be out of a job ? A. Yes.

Q. How long did you continue to use your influence to make the consideration for the grant high ? A. Up to the last meeting I attended, I think.

Q. You continued persistently and continuously to entertain the views you have suggested ? A. I endeavored to. There were some exceptions, Mr. Attorney-General. I was informed that in Atlan-

tic City there was a large section known as the light house district where the rights of the State to any claim at all were very much in doubt, and a stated price of three dollars a foot had been fixed there ; in other places they had a stated price of five dollars a foot, which appeared to be very low in comparison with rates charged for other land ; but that had been fixed and there was very little of the entire front left, and the rates continued. But with the exception of that, and—well, I don't know of any other case where a general rate was followed.

Q. What was the practice of the Board as to the requisite number of votes in order to justify a grant? A. From the time I became a member up to the time I left the Board it was always three votes, a majority ; that included the Governor, if the Governor happened to be present at the meeting, the Governor being looked upon, under the act of 1894, as one of the Commissioners.

Q. So that if the Governor were present, his vote, with that of two other members, would be sufficient to make the grant? A. At the first meeting I attended that appeared to be the arrangement, inasmuch as it was the Governor and two other members who were satisfied to endeavor to put into force and effect the new rule.

Q. After a vote had been taken, and the necessary three votes had, who would then sign the grant? A. All four members of the Board, invariably.

Q. The vote, I think was never recorded? A. Not that I know of.

Q. As a matter of fact then after the grant was voted for and signed by all the Commissioners it did not imply that you or anybody else had been in favor of it, as a matter of fact? A. Not always. As I understood it, it was a duty which was supposed to be performed ; we were merely executing a deed in compliance with an action taken by the Board.

Q. Was there any member of the Board who seemed to share or entertain the same views that you did in regard to the advisability of getting higher prices? A. Yes ; there was another member who usually stood with me, except perhaps, on some occasions, when he thought I was entirely too high.

Q. Who was that? A. Commissioner Holt.

Q. Did you know, during your term, that the counsel of the Board was receiving and dividing a fee for alleged examination of titles? A. I did not.

Q. You had not the slightest idea of it, had you? A. Not the slightest.

I might add that if I had it would have been known long ago.

Q. Did you have any suspicion or knowledge that he was receiving any other compensation than his salary of fifteen hundred dollars a year? A. If I had it would have been known long before I ceased to be a member of the Board.

Q. You did not, you mean by that? A. I did not.

Q. Do you remember some agitation about the Palisades and an inquiry which came from the New Jersey Senate? A. I do.

Q. Will you not tell us all that you can remember that occurred in the Board in reference to that matter? A. My first recollection of it was the fact that Senator Pitney—Judge Pitney—who was then he President of the Senate, and Senator Reed, who was the chairman of the committee to which had been referred an act ceding to the jurisdiction of the inter-state Park Commission all that land in front of the Palisades, a very long strip about three miles long, spoke to me as a member of the Board, asking me if I had any idea of the value of that land or whether it had any material value; I said I had, but that my opinion might not agree with that of the rest of the Board. They had, at first, asked me to ascertain what the value was and I suggested the adoption of a resolution by the Senate, which was done, and it was sent to the Board and we had one or two meetings I think at which we attempted to find, from the prevailing prices in the immediate vicinity, of Edgewater, where the tract started I believe, and, with the information in possession of the engineer what the value of the land was. As near as I can remember it now, I think we estimated the value at something like one and a half million dollars.

Q. A million and a half dollars? A. About a million and half at that time.

Q. That is the State's land there? A. The State's land there which the Palisades Park Commission Act as contemplated at that time would practically alienate from the State, provided the act was sustained by the Court, and at our first meeting an attempt was made to adopt a report of that kind, which failed.

BY SENATOR MINTURN.

Q. Was it valued by the foot? A. Part of it.

Q. How did you reach your conclusion? A. Taking into consideration the value of the adjoining upland and to what extent that upland would be improved by the acquisition of the riparian land in front of or adjacent to it; the added value on account of the acquisition of the State's right; and based on that, at the second meeting of the Board, a report was made which was, I believe, sub-

mitted to the President of the Senate through the Secretary of the Board.

BY THE ATTORNEY-GENERAL.

Q. Was there any difference in opinion in the Board about the attitude the Board occupied in reference to this and, if so, tell us all about it? A. Oh, there was very material difference in opinion, as I remember it. One member of the Commission, and the counsel of the Board, endeavored to—

Q. What is that? A. One member of the Commission and the counsel of the Board endeavored to convince the other members that there was absolutely no value there.

Q. Who were they—what member? A. Mr. Fisk, and Mr. Record, who was then counsel of the Board.

Q. What do you say they did? A. They endeavored to convince the other members that there was absolutely no value to this particular land in question, or if there was any value the State was not losing it because it was simply being taken out of the control of one department of the State and vested in another. I attempted to raise the question of our rights under the statute of 1894, and the constitutional inhibition and I was informed that if I was a lawyer I would know more about it and would not attempt to raise that silly question.

Q. You seem to have anticipated Vice Chancellor Reed on that point. A. Well, he agreed with it later on in the Atlantic City case that was somewhat similar; the same trouble arose there.

Q. You suggested that under the act of 1894, in connection with the constitution which confined the proceeds— A. Which irrevocably dedicates any fund that then or thereafter may be dedicated to the use of the free public schools.

Q. Your thought was they had not any right to practically give that away? A. That the Legislature had no right—they were not giving it away, they attempted to make it appear that they were giving it to another State party but they had no right to alienate it from the school fund and by placing it under the control of the Inter-state Park Commission to my mind it was taken out of the school fund.

Q. I understand that when you made that argument you were told that you were no lawyer and that was a very poor argument. A. That if I was a lawyer I would know better.

Q. How did Commissioner Holt stand on that proposition? A. He agreed with me.

Q. Things got pretty hot, didn't they, about it? A. Oh, yes; that was a frequent occurrence.

Q. What was the final up-shot of it? A. The report was adopted, Commissioner Cloke agreed with Mr. Holt and myself, and the report was approved and submitted to the Legislature.

Q. From your connection with the Board have you any suggestion or recommendation to make to this Committee in the way of having it embody in its report suggestions as to what should be done with our riparian land? A. About the only suggestion I have to make is the one I made the first day I became a member of the Board, that no further grants in fee be made. I did not know as much about the plan of leasing on a perpetual option basis then as I do now, but if there is any doubt as to that form of lease having been repealed by the act of 1891 I think that ought to be made clear. I do not think there is any doubt, and, if not, and if there is not sufficient authority vested in the Board at the present time to begin proceedings to annul all leases made since 1891, under the assumption that the act of 1871 was still operative, I think it would be wise for the committee to embody that in their report.

Q. Yes. A. There is another suggestion I would make. From some things I found out in endeavoring to secure information since this inquiry started I think there ought to be—the plans of the Board ought to be more concentrated. There does appear to be some doubt as to the actual responsibility for the collection of arrearages. If you attempt to secure any information in regard to that at the present time you will find it is because the State Treasurer's office is not apprised at all times immediately upon the issuance of a grant by the Secretary of State's office and that the Riparian Board seldom—except as on one occasion where, through counsel, there has been given direction to collect arrearages—very seldom had any knowledge as to whether or not there were any arrearages.

There is another thing which appears to be possible, or was possible under the old form of making a lease convertible into a grant, that the holder of that perpetual lease could at any time, without notice to the Board, call upon the State Treasurer and offer the principal sum and demand an absolute grant. That has been done in one particular case and I suppose it might be done in others under existing conditions.

Q. Evidence has been given before this Committee of grants or licenses made by the Board during your term to the Edgewater and Fort Lee Railroad Company and also the New Jersey Shore Line Railroad Company; do you remember those applications? A. I remember the application quite well; I think I attended pretty nearly every meeting of the Board while I was a member.

Q. What position did you occupy in regard to those applications? A. About the same as on most other cases; in the Edgewater and Fort Lee case in particular, that was as I understand, or as I recall it now, a grant of something like a mile and a half long and I don't know exactly what the length of the other one was. That was somewhat later, but to my mind if it was not worth more than fifteen hundred dollars it was not worth anything.

Q. That is the Edgewater grant? A. The Edgewater.

Q. Did you protest and object to the— A. I was about tired of protesting at that time. We had a new Governor, whose name it is not necessary to mention; it is already in evidence upon several occasions; that was the first meeting he attended, I think, and it was on account of the Guffey Oil case. I think I was responsible for having him come there.

Q. On account of what? A. The Guffey Oil application. That was a case where a very prominent lawyer had offered the Board ten dollars a front foot for a grant and assured the Board if we did not take that we will get nothing.

Q. That was Mr. Lindabury? A. Mr. Lindabury. The matter was brought to the attention of the Governor, and through him to the Attorney-General, and the Board got—the grant was made at that time at fifty dollars a foot under section four of the act of 1869. I believe they paid it later, or agreed to pay it.

Q. Did you hear any statement made that you can now recall by the counsel of the Board that the fourth section of the act of 1869, to which you have just referred had been repealed or was not operative? A. That statement was never made to my knowledge. The only time I can recall any reference to that having been made at all on any previous occasion was in the Goetschius grant application, in the opinion of the counsel rendered to the Board.

Q. Were you in the Board at the time the Goetschius grant was made? A. I was there at that time.

Q. You remember that an opinion was given on that subject? A. I do.

Q. Did you vote for or against that grant? A. I voted against it.

Q. Against it? A. Yes, sir. That was a grant made as I considered for the same consideration that was offered—that was the first I think, one of the first occasions I had to protest; there was about a half a mile of Hudson river front that an absolute grant was asked for. They merely called it a quit claim deed but to my mind it was an absolute grant, if the State had any title at all, and fifty dollars was offered for it. If it was worth no more the appli-

cant was not suffering by not receiving the grant and if it was worth more the State should receive all that was coming to it.

Q. At the time that the Goetschius grant was made, pursuant to the opinion of the counsel for the Board, did you know that he had been two or three years before of counsel for the Annette heirs on a lease? A. I did not.

Q. Did you at the time of the Goetschius grant know there had been in fact leases made in 1874 of this same property to the Annette heirs? A. I did not.

Q. If you had known that would you have permitted the grant for fifty dollars to be made, there being a large arrearage of rent, without even a more flagrant kick than you did make? A. I think not.

Q. No. A. Had I known that this property had already been held under lease and that the State at the time was entitled to some thirty or forty thousand dollars of arrearages which has since been brought to my attention, if the protest made at the time was not sufficient, I would have had other means of making a protest and would have done it.

Q. Now we will come to the Shore Line grant, the New Jersey Shore Line grant, about which we had some testimony this morning; did you also oppose that? A. For the same reason there as in the Edgewater case.

Q. Yes. A. In both instances I considered it a burden on the property which to my mind lessened the value of the State's interest.

Q. Do you remember the question being raised and referred to the counsel of the Board when the Edgewater application was made, as to the propriety of the thing and his giving advice to the Board upon that point? A. In the Edgewater case?

Q. Yes. A. I do not.

Q. Is there anything more you would like to speak of? A. Nothing that I know of.

THE ATTORNEY GENERAL.—Have the members of the Committee any questions they would like to ask this witness?

BY SENATOR MINTURN.

Q. Do you know anything about the Shamberg application or was that after your term? A. No; that was during my term. I know no more about it than what was testified to here today. My impression was that the price fixed was higher than fifty dollars a front foot. I don't know. At that particular time there was another applicant who owned quite some property in that particular section and whose name was brought in here in connection with the Water Front Im-

provement Company, Mr. Martin; the secretary will probably know whether or not it was the same property. But I think a price was fixed that did not satisfy the applicant in either case.

Q. Do you know why the Shamberg application was not made? A. Why it was not made?

Q. Why the grant was not made to Mr. Shamberg and why the license was granted to the railroad applicant? A. I do not.

Q. Were you called upon to vote on that? A. On the license? I am quite sure that I was.

Q. Do you remember how you voted on it? A. About the same way as I voted on the Edgewater and Shore Line license.

Q. Was there any discussion at the time? A. Very little, I think, outside of the fact that representations were made, but practically nothing was being granted, only a mere right.

Q. A right of way for a railroad? A. A right of way for a railroad—a right of way for them to acquire the right.

Q. At that time the application of Shamberg was before the Board? A. At the time of the New Jersey Shore Railroad application?

Q. I am speaking now of the application of Shamberg for a grant for which he offered to pay eighty thousand dollars to the State. A. I do not know of his having offered eighty thousand dollars. I never heard of that until this morning; he may have made that offer, but I do not recall his testimony; he stated that Mr. Record told him that eighty thousand dollars or fifty dollars a front foot was what it would cost.

Q. Was the Board aware of that fact? A. Of that statement having been made?

Q. Yes. A. I doubt it, but I am satisfied that land up in that particular section would hardly have been fixed at a lower rate than fifty dollars a front foot.

Q. What I am after is, why did the Board, in the face of the fact that they had in their possession an application from Shamberg, the owner of the right to the land under water in front of his land, make this grant through the medium of a license to this railroad applicant and ignore Shamberg completely? A. Presumably for the reason that they did not know it covered the same ground.

Q. Did they make any— A. I, for one, do not recall both applications being before the Board at the same time.

Q. The record shows they were? A. The record shows one was made on October 13th and the other on January 5th; one on October 13th—or the 10th, 1903, and the other on January 5th, 1904, and granted two days afterwards.

Q. At the time it was granted the Shamberg application was before the Board and had been for some months I understand? A Yes; it had been from October 15th.

Q. Was not that application of Shamberg's brought to the attention of the Board? A. The fact that it covered the same territory?

Q. Yes. A. Not that I can recall.

Q. Whose duty was it to direct the attention of the Board to that? A. To the particular location?

Q. Two applications for the same grant are practically made to the Board at about the same time; whose duty was it to inform the Board that these applications covered the same grants? A. It would be the duty of the Secretary if both applications were pending—if the application of Shamberg was still there and had not been acted on, and the application of the New Jersey Shore Line railroad covered the same territory, that would probably be his duty. We always relied upon the abstract of title passed upon by counsel of the Board, which testified as to the fact that they were the owners of the right, and assumed it was correct as to form.

Q. If you had known at the time this application of the railroad was granted for the sum of $300—I think that is right, Mr. Attorney-General?

THE ATTORNEY-GENERAL.—Quite right.

Q. If you had known there was then pending before your Board a similar application, or at least an application for the land under water, an absolute grant, in behalf of the owner of upland under which he would undertake to pay eighty thousand dollars to the State, or fifty dollars a front foot, you would not have voted for nor granted the license asked for by the railroad? A. Well, I did not do it anyhow, but that would have been no stronger argument to my mind because I considered land in that vicinity worth at least that anyhow and in my judgment the mere fact of granting the license to the New Jersey Shore Line Railroad Company would depreciate the value of that to such an extent that the State would not get what it might otherwise get from that land when sold later. It would not have changed my opinion in the least.

BY ASSEMBLYMAN BARBER.

Q. Did you advance that view to the Board when the matter was discussed, that the running of the road would depreciate the value of the other property? A. That was argued. It was the granting to somebody in my judgment—not being a lawyer, as I was very frequently told—I was not sure whether I was right or not, but it was the granting of an easement for certain rights the State held

and might convey without the burden of that easement and to my mind it depreciated the value, and the mere fact of an application being in from somebody else would not have changed that.

BY SENATOR MINTURN.

Q. Even if an application was not in from somebody else it would be unfair to the owner of the upland, without notice to him, to make a grant of that kind to a railroad or anybody else? A. I do not think there is any doubt about that.

BY THE ATTORNEY-GENERAL.

Q. Do you recall the fact that when the Shamberg application was made the map which was shown indicated it to be at the Bulls Ferry tract? A. I do. Every time an application was submitted to the Board there was a map presented.

Q. And do you recall the fact that it was at this place (referring to map) "Bulls Ferry"? A. Yes, sir.

Q. Do you not also recall the fact that when the New Jersey Shore Line Railroad Company application was made you saw it to be on a portion of this same Bulls Ferry tract? A. Undoubtedly.

Q. You now do not recall that at the time the Edgewater grant was made you recalled the fact that there was also another application? A. I could not keep in mind all the applications that were there.

Q. I want to direct your attention to the Cheeseboro, the Vaseline, grant down on the river; do you remember that? A. I do.

Q. About what time was that made? A. In 1901, I think.

Q. Do you know where that was? A. Oh, it was some distance from it.

Q. Which way, east or west, going up the river? A. It was west of the Long Branch bridge.

Q. I think that was made for about fifteen dollars. A. Fifteen dollars a foot.

Q. Have you any idea what the owner of the upland paid for the upland? A. I have not.

Q. Do you know whether the Board made any attempt to ascertain? A. At that time?

Q. At that time. A. In the usual way they did, and it was stated that the land in that section was practically valueless.

Q. Is it not a fact and have you not since learned that Mr. Cortlandt Parker sold that upland to this concern for about one hundred thousand dollars? A. I have learned that a very small portion of it, or at least I heard one member of the Committee say, had been sold for about two hundred dollars a foot.

Q. In addition you also know that the sole reason that concern

came there was because they could get the riparian right for fifteen dollars a foot contiguous to the upland, for which they paid two hundred dollars a foot? A. Yes, sir; that was their reason.

Q. What was your opinion on the question of what amount should be paid? A. The prevailing rate in that particular section, I think, at that time was two or three dollars a foot, and I was satisfied that it was worth more than some of our land in other parts of the State, on the Hackensack, for instance, and I wanted to get a higher price for it and endeavored to secure twenty-five dollars a foot, but could not do it because there was some opposition to that. There was a strong effort made, I believe, to have it granted at seven dollars and fifty cents and finally a compromise made on fifteen dollars.

Q. There has been some characterization of some prices, of some previous grants along the Hudson, as being made for prices that appear like mountain peaks, up and down, without regard to any consistency. Have you anything to say about that? A. Practically nothing. My view was very seldom obtained in fixing the price.

Q. Looking back upon what was done can you say there was any consistency in the figures? A. I think not.

Q. You think not? A. Very little.

BY SENATOR MINTURN.

Q. Was there any rule enforced in the Board by which applications were to be presented to the Board after they were received by the secretary or counsel? A. Was there any—

Q. Did the secretary or counsel have any discretion, were they allowed to present an application or petition as they felt inclined or was it their duty to hand it in when it was presented? A. Custom made it their duty; the secretary always presented applications and petitions as they were received.

Q. If this Shamberg application had been presented to the Secretary or counsel for transmission to the Board, the Board would have expected that to have been presented to the Board in its order? A. Unquestionably; and it probably would.

BY THE ATTORNEY-GENERAL.

Q. I want to ask you to see if you cannot recall that at the time the New Jersey Shore Line application was presented the subject was discussed and statements made by the secretary that there was an application then pending for a grant of that very property, and more too, by Shamberg; do you recall that? A. I do not recall it.

Q. You do not recall it? A. No. That statement may have been made.

Q. But you cannot recall it? A. No. It was the same property and the same maps would be presented and in all probability it may have been made.

Q. You do not recall it? A. No; I do not recall it.

Q. You would not be willing to say it was not made. A. No; I would not.

WILLIAM CLOKE recalled. Examined by the Attorney-General.

Q. Application was made by Mr. Shamberg to the Board while you were a member of the Board for a grant and it was stated that he was willing to pay at the rate of fifty dollars a foot, and that application was never granted. What are your views about that? A. My recollection of that, Mr. Attorney-General, is this, that those negotiations between Mr. Shamberg and the Board were prolonged for a considerable period; he did not press the demand for that grant. My recollection is that the negotiations failed; we failed to make a price because he did not press for it. What his reasons were for not pressing for a decision of the Board I do not know. I only know that he did not and we did not make the price. If he had—well, you will see, Mr. Attorney-General, by the minutes of the Board that the consideration of that case went over from meeting to meeting and the reason was that he had some reason for not pressing the Board to make a price. If we had made a price, I doubt very much if he would have got it for fifty dollars a foot, which would have netted the State eighty thousand dollars. Instead of getting that grant for eighty thousand dollars he will not get it today for less than one two hundred and forty thousand dollars, which is one hundred and fifty dollars a foot.

Q. When an application is made to the Board, the old Board—or the present one either, for that matter—does the applicant have to keep pressing or hugging the Board all the time? A. Well, in this case, and sometimes in other cases they feel of the situation; it is a large transaction and there may be other reasons that we are not familiar with, and probably were in this case, why they were not pressing for the decision. At any rate we never made the price for them and we would have made it if they had asked for it. We always make the price when the applicant asks us definitely to make it.

Q. Did you know at the time that Mr. Shamberg had bought the

upland expressly with the understanding that he was to get the riparian rights? A. I do not think I did know that.

Q. Tell me another thing. You remember at the time the Shore Line Railroad made its application for a license, whether or not at the time that was taken up before the Board the fact that an application for a grant by Shamberg was already before the Board for a part of the same property was adverted to by the secretary? A. My recollection is that it was.

Q. It was? A. My recollection is that we discussed the effect of that lease upon the value of the riparian right and we had quite a little discussion of the question; some took the view that it would depreciate the value of the State's riparian holdings, but the other view prevailed that it would increase the value of the State riparian property because it would give access by rail to a region that was cut off by everything but the river, there being a precipice on the rear and no way of getting up along there except by this railroad. Now, this question was adverted to. That is my recollection. Mr. Farrell does not seem to remember it, but my recollection is that we discussed the question and said that—I remember Mr. Fisk laughing about it and saying that the railroad company would make an argument stating it would increase the price and the owner of the land would come before the Board, and he would make an argument just to the contrary, that it depreciated the value, and we had a little fun about it. That was the discussion and anyhow we seemed to reach the conclusion that it would not depreciate the value of the State's land; that it would increase the value. That was the theory upon which that lease was made.

Q. That prophecy of Mr. Fisk's seems to have been fulfilled? A. Which?

Q. That the owner would say it was a detriment and the railroads claim it was an advantage—that is just what occurred? A. That seemed to be the situation.

BY SENATOR MINTURN.

Q. When an application was presented to your Board in writing was it the custom of the Board to act upon it? A. Yes; surely.

Q. Here was an application from Shamberg? A. Yes.

Q. And there does not seem to have been any action taken on it? A. My recollection, Senator, as I stated before, is that the negotiations were kept open for some purpose and that Mr. Shamberg was not pressing for a decision of that case. Whether he was negotiating with other parties—I don't know what, but that seemed to be the situation, and we did not make the price because it was not asked for.

Q. Did you ever hear of eighty thousand dollars being mentioned as the price? A. Eighty thousand dollars?

Q. Yes. A. Not until today; it may have been made, but I do not recollect any such thing.

BY ASSEMBLYMAN BARBER.

Q. When an application is before your Board—take the application of Mr. Shamberg, does the Board wait for Mr. Shamberg to press the application before fixing the price? A. No, not usually. When an applicant comes before the Board and makes his application and makes his argument upon it we usually go into executive session and fix the price, but in this case you see it was laid over from meeting to meeting. Now, my recollection is not distinct upon it but my very strong impression is that he wanted it kept open in order to—well, I don't know what; but I think that he hoped to arrive at some understanding by which a price suitable to him might be secured. Anyhow he never asked us—

BY SENATOR MINTURN.

Q. On whose application was it continued over from meeting to meeting? A. I do not remember that, but if he had wanted to buy that property from the State at a figure that the Board was willing to sell at we would have made a price for him. The fact that we did not make a price, and my recollection of the matter, and the minutes of the Board all show that he did not press for a decision.

Q. Even admitting that, why was this license made to the railroad company without notice to him in view of the fact that his application was then pending? A. I think a notice ought to have been made to him.

Q. It was made? A. I think it ought to have been made. The other lease to the Edgewater was cited as a precedent in this; Mr. Vredenburg came before the Board and wanted this lease and cited the other case and Mr. Fisk, if I remember right, agreed with him and stated it would be made on the same terms—about the same acreage—and I think we did make his lease on the same terms as we did the other.

BY ASSEMBLYMAN BARBER.

Q. Why would it not have been good business policy on the part of the Board to have sent to Mr. Shamberg and said, "We have an application from this railroad company and if you want the lease you can have it for so much money," in consideration of the fact that the railroad people apparently were not willing to pay for it? A. Well, we don't invite customers to come in; if they want to secure the property of the State they know where to come; the Board is there.

Q. But the Board is the merchant having the goods for sale. A. I know, but we were not setting up a bargain counter and pressing the goods on the customer.

JOHN I. HOLT sworn. Examined by the Attorney-General.

Q. How long were you a member of the Riparian Commission? A. Ten years.

Q. From when to when? A. 1894 to 1904.

Q. You were originally appointed by whom? A. Governor Werts.

Q. During your term did you have any views in regard to the policy or the prices that should be had for the leases or sales that were made and if so what were they? A. The plan I have always pursued was to get as good a price for the State as possible; of course, I was not the highest priced man on the Board. Mr. Farrell assumed that position, but I always tried to be fair and to get as good a price for the State as we could possibly get.

Q. Was there any dominating influence in the Board during say the last ten years of your service? A. I always thought so.

Q. What influence was that? A. Well, I noticed several times a combination between Mr. Fisk and Mr. Cloke and I always attributed it to Mr. Record being the influence back of both of them.

Q. Why did you reach that conclusion? A. From observations in different cases that came up.

Q. Can you give any instances? A. Yes; I think the resolution that came from the Senate asking for a price on the Palisades was one of them.

Q. What occurred then? A. The feeling in the Board seemed to be to place the State lands at a very small value and I felt a little different from Mr. Cloke and a little different from Mr. Fisk; Mr. Farrell and I stood out for sending the true value in answer to the inquiry from the State and it was a good while before we accomplished that result.

Q. What occurred at that time, if anything, to make you think there was any dominating interests? A. Well, there were several cases that I might cite. There was a case down in New York Bay. An application was made that hung fire for a good while, made by a man named Thornton I think, I think he was the attorney, and that stood out for quite some time and I don't think the grant was ever taken. And then there were other cases that I can't think of now, but at the time I was fully impressed that there was some influence.

Q. Testimony already before this committee shows that grants were made from time to time during your term of valuable water

front on the Hudson river at very varied prices, what I have been pleased to call mountain peaks, up and down, without any apparent consistency whatever. What would you say as to whether or not those grants were consistent? A. I think that the evidence we had before us at that time would show that there was some reason why the prices varied. When I first went into the Board there were certain lines mapped out at certain prices, which I thought were inconsistent. For instance, on the Passaic river, one piece of property would have perhaps twenty or thirty feet of water in front of it and another piece right adjoining would have big rocks there, and I did not think it was fair to charge a man who would be practically prohibited from utilizing the grants without a great deal of expense, the same price as the man adjoining him with twenty or thirty feet of water paid. It was at my suggestion that each grant was taken up separately and visits made to the ground. In that way, prices, right adjoining, may vary.

Q. Did the Commission in fact visit every locality upon which they made grants? A. Not as much as I desired.

Q. You desired a little more care displayed in the ascertainment of the proper values? A. Frequently an application would be made for a grant and the different members would say they would go but when the time came a very few of them would put in an appearance. I think I did more visiting than any other member of the Commission during my time.

Q. Do you remember the two grants to the Edgewater and Fort Lee and the New Jersey Shore Line Railroad for a nominal consideration, the right to build a railroad? A. I do.

Q. What position, if any, did you take about those grants? A. I think I was a high priced man in that case.

Q. Was the effect, if any, upon the making of these licenses to the railroad and the subsequent building of the tracks of the roads, upon the value of the reversion of the State's right discussed. A. I understood it was—I don't understand your question.

Q. Was the effect that the granting to the railroads of the privilege of erecting their roads would have upon the reversionary rights of the State— A. I thought it was a detriment.

Q. You thought it was a detriment? A. I did.

Q. Was that discussed there? A. It was.

Q. Notwithstanding that the grants were made? A. Yes, sir.

Q. You did not approve of them? A. I did not.

Q. Do you now recall that at the time the license was made in 1894 to the New Jersey Shore Line Railroad Company, Mr. Vreden-

burg being the attorney and Mr. Earl appearing with him, Mr. Alexander Shamberg had made an application for a regular grant? A. I do not remember it. What part of 1904?

Q. Early in January, 1904, you were still in the Board? A. Yes, sir.

Q. Do you remember that one Alexander Shamberg filed an application for a very large grant up at Bulls ferry? A. I do.

Q. Do you know why the Board did not act on that—do you recall why they did not? A. I do not.

Q. Do you now remember that while that was pending an application was made by Mr. Vredenburg and Mr. Earl in behalf of the New Jersey Shore Line railroad? And this discussion took place that you spoke of and notwithstanding your protest a grant to the New Jersey Shore Line railroad was made? A. I think it was.

Q. You recall that? A. Yes.

Q. Do you remember why notice was not sent to the owner of the upland, Mr. Shamberg, of this application of the Shore Line railroad for this grant? A. I think that matter was discussed at that time.

A. And what was said, if you can recall? A. I understood it was not necessary to send it to him.

Q. Do you know who gave that advice, that it was not necessary? A. I think Mr. Record did.

Q. Have you any suggestions to make? The Committee want to know, not only anything that has occurred, but would like to have any recommendation you desire to make in regard to the holding and the disposition of the lands of the State that remain in the State; have you any suggestion to make from your long experience in connection with this Commission? If you have I am sure that this Committee would be glad to hear it. A. I do not think that the policy which I have understood the present chairman has adopted to have nothing but leases made will ever be successful. We had a trial of that in Foster Voorhees' time; in fact we did no business for five or six months. I do not think capital would invest in leases and put up any great amount of buildings on leased grounds. I thought so at the time.

BY SENATOR MINTURN.

Q. You do not agree with Mr. Farrell's views in that respect? A. No, sir.

Q. You heard him state his views?

THE ATTORNEY-GENERAL.—I do not think Mr. Holt was in the room at that time.

Q. I suppose you are familiar with Mr. Farrell's views as a member of the Board on the subject of leasing? A. I am not.

Q. You never heard them stated before the Board? A. Well, when the question came up before the Board it was discussed in this way; they thought it would have been a good thing if the matter had been taken up years before, but at this late day it was too late to adopt a policy of that kind.

MR. DUFFIELD.—Before the Committee adjourns I will state that I have received a communication addressed to me from the superintendent of the Oyster Commission for the District of Ocean County as follows:—

I beg to call your attention to the flagrant manner in which the Riparian Commission is giving grants for our natural seed grounds. I understand this to be in direct violation of the law, and if allowed to go on will work serious injury to our people. Will you kindly give the matter your immediate attention?

Yours very truly.
E. HORNER, JR.

I wrote to the gentleman that I would call the matter to the attention of this committee who would probably give him an opportunity to be heard. I do not know the nature of his complaint beyond what is indicated in this letter.

SENATOR MINTURN.—There have been some other communications and I think we should give them all an opportunity to be heard.

MR. DUFFIELD.—I sent this to the Secretary of the Commission who informed me the Board would make no grants during the pendency of this investigation; so I assumed no grants would be made until after this matter was acted on.

The Committee then adjourned until Friday, October 19, 1906, at 10.30 A. M. at the Senate Chamber, Trenton, N. J.

SENATE CHAMBER, STATE HOUSE.

Trenton, N. J., Oct. 19, 1906.

Meeting of Special Committee of the New Jersey Legislature to Investigate the Granting of Riparian Lands by the State, etc.

PRESENT:

SENATORS WAKELEE and MINTURN, and ASSEMBLYMEN BARBER, REED, HOLCOMBE, JONES and CROWTHER.

ATTORNEY-GENERAL MCCARTER.

SENATOR WAKELEE.—Before we proceed, I would like to state that on Saturday last, October 13, the Committee took a trip up and down the Hudson river and through the Kill von Kull, and the Secretary, Mr. Barber, was requested by the Committee to prepare a proper report of what the Committee did, which will be spread on the record, at the close of today's proceedings.

Another matter: I, as Chairman of this Committee, was asked by a gentleman who appeared before the Riparian Commissioners, whether or not this Committee desired to withdraw its request to the Riparian Commission not to make any further grants at this time, in favor of one particular application on the Passaic river. I did not intend to represent the Committee, but my reply was that I didn't think it would be the policy of this Committee to make any exception; that we requested that Board to stop doing business on the ground of public policy, until the State could devise some scheme for the future, and I did not think that this Committee ought to make any exception or take up any individual grants. I state that for the benefit of the Committee, and if anybody has any different views, he may express them.

SENATOR MINTURN.—I simply want to state that I concur with Mr. Wakelee in the views expressed.

WILLIAM CLOKE recalled. Examined by Mr. McCarter.

Q. At the termination of your testimony the last time, I ex-

pressed a desire, in which you concurred, that you should favor this Committee with any views which you might entertain touching the general policy of the disposition by the State of its riparian lands; are you prepared at this time to give us your views upon that and kindred subjects? A. Yes, sir.

Q. Will you please do so? A. What I am about to say is the result of my study of this riparian question, and of my experience of ten or more years on the Riparian Board, and a careful study of the situation. What I propose to say here is in vindication of the policy that has been pursued by the State of New Jersey from the first, in the disposal of this riparian property. I know there has been some criticism of that policy in a few newspapers—three or four out of the fifty-five daily newspapers in the State I think have criticised that policy. They have held that the legislative grants made years ago to large corporations, etc., was parting with this valuable asset of the State for a song, and that the Riparian Board has since parted with valuable assets of the State for a song, etc. Now, what I say is in vindication of the policy of the State against this criticism.

New Jersey originally owned all the land under water from high water mark out to certain fixed but variable limits. Some of these lands were disposed of by freeholders' licenses and others by legislative grants. Finally all that remained were placed in charge of the Riparian Commissioners to dispose of on such terms "as they shall deem necessary and most conducive of the interests of the State."

In all these forty years it has been the policy of the Riparian Commissioners to dispose of these lands on such terms and conditions as were best calculated to develop our shore front, bring capital, enterprise and population into New Jersey, and at the same time realize as large an amount as possible, having in view the main purpose, for the State. To exact the last dollar for them was not regarded as such "main purpose." They were regarded as State territory, to be disposed of on liberal terms to a desirable class of population, who would improve and transform these barren shores and mud flats into scenes of commercial and industrial activity. They were regarded as bearing much the same relation to their owner, the State, as the upland bore—as an undeveloped asset which capital and labor should be induced to occupy and develop. This policy has operated beneficially. It has built up our tidal water shore fronts, added tens of millions to our taxable resources, and hundreds of thousands to our population.

But within a recent brief period a new school of economists has arisen to question the wisdom of this policy. It is held that the state should part with no more of these shore front lands except on terms that would assure to the State the "unearned increment". It is proposed that the State shall become a permanent landlord in competition with its own citizens. Attention has been called, in support of this proposed change of policy, to the great increase that has taken place in the value of some of these lands since the State parted with them. One grant, it is said, made twenty years ago, is now assessed at five times what it was sold for ; and other instances, still more striking, are given.

These instances simply prove that it is by the sale or leasing of these undeveloped riparian lands that the state derives its chief advantage. Why, the entire territory on which Jersey City and Hoboken now stand was once sold for $10,600. The Riparian Commissioners today could give this Committee numerous instances of riparian properties sold by them within the past two or three years, now being worth not only five times, but twenty or even thirty times what the state received for them. The increased value is due to the costly improvements made by the purchasers.

It is easily within bounds to say that the lands under water that have been disposed of by legislative and other grants from the beginning, are now worth one hundred and fifty millions of dollars. At the average tax rate of the state, which is said to be 2%, this property now returns to the municipalities and the State, in the shape of taxes, three millions of dollars a year, or more than one-half the entire amount that has been realized from the sale and leasing of riparian property in half a century. In ten years this improved property now pays in taxes thirty millions of dollars ; in twenty years, sixty millions of dollars, and in thirty years, ninety millions of dollars. Here is where the public schools derive their best advantage from the use of these riparian lands—from converting them into a tax-paying asset. Is not this better policy than to retain them in the possession of the State in the shape of non-tax-paying, undeveloped mud flats ?

For, bear in mind that until it is sold or leased, this property pays no taxes at all, not a cent. It is state property, and state property pays no taxes. It is only after the State disposes of it, and it gets into private hands, that it begins to pay taxes.

The arguments advanced by the economists who condemn the policy the state has pursued for half a century, that these valuable shore fronts in Hudson county have been parted with by the state

"for a song," as they put it, and that if the State had held on to them they would now be worth many millions, is therefore fallacious. The "song" the state received for them was not only the few millions in cash for which they have been sold, but the magnificent and costly improvements that now adorn this shore—the numerous ferries, the splendid piers and warehouses of the German steamship companies, the great depots of the Delaware & Lackawanna Railroad Company—the big grain elevators of the Erie and other companies, the great stations of the Pennsylvania and other railroads; the numerous great industrial and commercial establishments, all teeming with well paid artisans and workers, and hundreds of other industries that add to the wealth and greatness of the state, live assets bustling with energy and returning millions a year in the shape of taxes.

The relation of the state to this under-water domain is closely analagous to that of the general government toward the vast undeveloped west in the latter half of the past century. The Government did not hold on to this magnificent domain in the spirit of a greedy landlord, intent on filling the National treasury with the unearned increment. It hung the Nation's latch-string outside the door and invited all worthy industrious citizens to enter upon, and enjoy freely, this vast stretch of fertile land—to carve out homes for themselves and their children, to build up thriving American communities and to build great cities and commonwealths on these broad prairies. Was it wise policy? Did it pay?

The same broad statesmanship has disposed of our riparian domain in a way best calculated to bring capital, enterprise, population and wealth to our state. It has converted barren shores, idly lapped by unused waters, into great harbors; has built up large and prosperous cities, with factories, mills and machine shops on our shores, and has filled the air of those marshes and mud flats with the music of industry and commerce.

I have corresponded with a number of firms that lately secured riparian grants from the state, asking them certain questions. The data they give are illuminating. I have summarized it.

The American Cotton Oil Company, who secured a grant near Guttenberg last year, say it was assessed for that year, after the improvements were made, at $368,800, and paid $7,412.88 in taxes. Before that it was assessed at only $25,000. They say they would not have taken the property on a lease "unless the terms were so liberal as to amount to practical ownership." The company pays $136,000 a year in wages.

The American Smelting and Refining Company, with plant at

Maurer, employ about 1,200 men and pay out $600,000 a year in wages. The yearly tax is now $8,000. Before the riparian property was sold and the improvements made, it paid about $100 a year in taxes. "We should not have located our plant there had the state limited us to a limited lease of the lands under water and refused to make us a grant," say they.

The Chrome Steel Works in Woodbury Township was assessed last year at $200,000. This year they expect it will be assessed at from $400,000 to $500,000. They now employ 360 hands and will employ at least 500 when all the departments are under full headway. The wages amount to $200,000 for the current year. The taxes paid in 1904 and 1905 were nearly $6,000 a year, whereas for 1903, before their improvements were made, the taxes amounted to $561, being on an assessed valuation of $20,400. "We certainly would not have erected buildings of the character that we did erect if we could have secured only a limited lease; it would certainly have to be a long lease," they say.

James Pyle & Sons say, "We beg to assure you that if we could not have purchased the riparian rights in the lands under water, we would not have located at Edgewater, it being at all times our policy to own the lands on which our works stand." Their works at Edgewater are now under construction. They will employ about 150 men to start with.

Without speaking for any other member of the Board, I have been guided in the performance of my duty as a Riparian Commissioner, by the views and policy herein set forth. I have felt that it was proper to secure as much as could reasonably be done for the public school fund in selling or leasing these lands under water, but this has not, in my judgment, been the controlling consideration in disposing of them. That consideration was to dispose of them, as the language of the original act has it, "on such terms as they shall deem necessary for and most conducive to the interests of the state." I always felt that New Jersey should extend a generous and welcoming hand to such enterprises.

I desire to call the attention of the Committee to the fact that there is an exaggerated and erroneous idea abroad as to the importance of the proceeds of these riparian grants and leases in supporting our public school system. The notion has somehow got abroad that our free public schools mainly depend upon the state school fund, made up of the proceeds of sales and leases of lands under water for its support. The idea is absurdly wide of the mark.

To run the public schools of New Jersey last year cost, in round figures, ten millions of dollars. The income from the school fund,

made up of all the riparian sales and leases was $200,000—just 2% of the entire cost of supporting our free public schools last year. It is a dishonest argument, therefore, to invoke in behalf of the suggested change of policy, the deep and just reverence in which the people hold our free public school system.

I think it would be a mistake to limit the Commissioners to leasing these riparian lands ; it would be wiser to continue in them the discretion that has always been exercised. There are cases in which large and important enterprises would be driven away from New Jersey, if only leases were given. There are cases where large holders of riparian property that have been improved by the erection of immense and costly structures desire a little additional riparian property to enlarge their plants. They would not want to build such additions on leased lands.

If these lands under water are to be leased as they stand, unimproved, the lessees would only take them on long and favorable terms. If they are to be improved by the state and then leased, as New York City now does, it would involve the expenditure of millions of dollars by the state, and even then the securing of customers for the improved riparian property would be problematical. For there would be no access to the upland. For, let it not be forgotten, while the state owns the lands under water, it owns not a foot of the abutting upland. It could only secure this as an approach to its improved riparian property by purchase. Nor must the fact be lost sight of that the riparian owner, as the owner of the abutting upland is termed, has an interest in the lands under water in front of his property. How is it proposed that the state shall extinguish or acquire that interest. After the state has improved its riparian property, it could only lease it, as the law now stands, to the owner of the abutting upland. In other words it would be limited to a single customer for each piece of riparian property—the owner of the ripa. The state could not throw open its improved property to competitive bids.

If the state goes into the business of improving its lands under water in order to make them marketable, it requires no very fertile imagination to conceive what wire pulling and pressure will be brought to bear in the legislature for appropriations for such improvements within their limits. New York City has expended over one hundred millions of dollars in improving her water front property, and yet gets but very small interest on the investment in the shape of rentals.

In conclusion, I believe that the state should dispose of these lands under water by such conveyances as will best meet the views

and purposes of the great interests that want to come into New Jersey and develop these unimproved shore fronts, as will most surely promote the flow of capital, enterprise and population into our state. The hard and grasping policy would drive them out to other states, and New Jersey would suffer their loss. In the strenuous commercial rivalries of these times, New Jersey wants to keep her end up and not give her rivals an advantage.

I want to supplement that statement by the suggestion that was given to me in the office of the Bureau of Labor Statistics and Industries. It is said that there are a large number of communities in New Jersey that offer substantial inducements to manufacturers, industrial concerns, to locate in this State. I know of an instance in Trenton where we raised some twenty to thirty thousand dollars some years ago to buy the land and put up a building for a factory to come here. In Keyport the Board of Trade this week voted $1,500 to pay the expenses of moving a plant there and provide them with a building, It is well known that inducements are offered by communities in this State for that purpose.

Today a gentleman was before the Riparian Board asking for a grant for lands on the Passaic river remote from any improvements. It is right near the Plank Road trolley crossing the Passaic river. No improvements, I should think, within many hundred feet of that place. I could not see any. Nothing but marsh. It is important that the State should develop this land, and the party wanted a grant; he would not take a lease. We had a meeting yesterday and adjourned until today. He informed us yesterday that New York is making arrangements to develop the undeveloped section of her shore front in competition with New Jersey, to get these industrial plants that are so important to the State and to the municipalities. Jamaica Bay is making arrangements to dredge out the land and make it available for such purposes. That is all I have on that point. But there are two other matters I want to refer to. The other day Commissioner Holt said in his testimony that he had an impression that there was a combination between me and Mr. Fisk. I wonder where he got that impression. I can only account for it in this way: Mr. Fisk was chairman of the Board, and I regarded him as a very accomplished man, in that particular line at least. He was thoroughly familiar with riparian matters; had been on the Board a good while and was a man of brains, and I always found him sound in his judgment. I thought I did, and I relied upon his judgment a great deal in considering these matters that came before the Board.

He was the chairman, and I generally sided with him as against

some of the members at times, particularly Mr. Holt. It was a question with me whether I should follow Mr. Holt's judgment or Mr. Fisk's, and I thought sometimes Mr. Holt made rather surprising propositions. I never thought he was steadfast in his views. He would make eccentric and hasty suggestions at times, and I generally sustained the chairman; and I want to call the attention of the Committee to the fact that there must have been more than myself in the combination; there must have been either Mr. Farrell or Mr. Holt himself, because no proposition could carry without three votes. There could be no combination between me and Mr. Fisk to rule the Board. It is an absurd suggestion. There was no attempt that I ever saw to rule or dominate the Board; if there was I am unconscious of it.

I want to speak about another matter, this Shamberg business. The idea has been given out in some newspapers, a few of them, only a few, but they make an awful lot of noise—that the application of Shamberg for this property was ignored by the Board; that he was ready to pay $80,000, and that instead of taking that, seizing that $80,000—a very fine and attractive sounding sum—for the State, we sold the same property for $400 to a railroad company.

The records, I have been looking them up, show that Mr. Shamberg's counsel never asked us to make a price, and the matter went over from time to time, at his suggestion, and the very last meeting at which that question came up, the matter was postponed at the request of his counsel, Mr. William H. Corbin. He stands in no attitude to come here and complain that the Board declined to make him a grant. He never offered any money for it whatever. He may have talked with Mr. Record or some others; I don't know. I am only telling you about the attitude of the Board.

Now, the license to the railroad for $400—it sounds absurd to say that we would make a grant to the railroad for $400 when we could get $80,000 for it. It is absurd, because it is absurdly incorrect. We have disposed of riparian grants without the slightest consideration of those licenses. We haven't taken them into account as affecting the value of the riparian land at all. We made a price of $100 per foot,—the man has not taken it yet but he will without mentioning that the license to the railroad has any effect on the riparian value, and, furthermore, I say here that he would never have got it for $50 per foot. If he was willing to pay $50 per foot, he would not have got it for that, and he would not get it now for three times that, probably more, four times. We think the property is more valuable along there.

That is all I want to say. I want to clear that up; as some of the newspapers have put it, it is putting the Board in an absurd attitude, selling for $400 what we were offered $80,000 for.

BY SENATOR MINTURN.

Q. What I was trying to make clear at the last hearing was, why the Board should make a grant to the railroad company with the Shamberg application staring them in the face, and without any notice to Shamberg; it seemed to me unfair to Shamberg, the owner of the upland? A. I agree with you that that notice ought to have been given to every riparian owner on the line of that license. I haven't in this investigation differentiated my attitude in that Board from the other members, and I have felt very reluctant as showing myself up as better than the other members, and kicking against what other members have done. I have tried to assume the attitude that what one did, all did. I haven't shirked any responsibility, but as to that matter, I think that these riparian owners ought to have been notified, although, as I have stated in explaining that matter before, those licenses were made on the assurances of men who, I think, had authority to speak, that it would not affect the value of the other lands injuriously at all; that every riparian owner along there was very anxious to have that railroad, and it is my opinion, sir, today, that they will be glad to have it there. We didn't notify them specifically; at least it was not ordered that they should be notified. The reason urged before the Board why we should make it was, that it would enhance the value of the State's holdings, and I firmly believed it would. There are railroads along our riparian holdings, that, in my opinion, have increased the value of the riparian property, and I think that would have done so. That is all, gentlemen.

Q. I understood you to say, in reading your paper, that the idea of leasing land is a new idea, put forward by a new school of political economists? A. No; it is the idea of limiting us, of limiting the Board in the disposal of these lands to grants alone, and not only that, but the particular idea that I meant to convey in speaking of these modern economists was, that they claim that the whole policy of the State from the beginning has been ruinously wrong. I say that it has been beneficent and wise; that it has developed the State of New Jersey. These lands were dead assets, and if they had been allowed to remain to the present day undeveloped they would not pay a cent of taxes. Now, they are paying millions. I think it is a wise and beneficent policy to act as private individuals do, as the government of the United States has done, as communities have done, luring factories and industries into our State.

Q. Still I noticed in the New York Herald about a week or two ago— A. I don't think that the New York Herald is under investigation; that is my private business.

Q. I should say in the New Jersey edition ; that Toms River should not encourage the coming in of industries because it would spoil the scenery? A. Sure ; how would you like to see a lot of smoking factories coming to Belmar or Long Branch or Asbury Park? That is a totally different situation. Your common sense will show you, that to locate a lot of smoking factories down there would be ruinous to the seashore resorts.

Q. That is what you have done on the Hudson river front? A. They are there for locating industries and developing commercial enterprise.

Q. I can show you a place called Hyde's Park or Weehawken Heights, where residences have been made unfit for use—people who have built expensive houses have moved away because grants of land have been made under the bluffs upon which factories have been erected. A. The logical application of that argument would be, the factories and workshops should be driven out of the State, but I say if a few people who have fine residences in such a locality are crowded away by the growth of new industries, and who suffer consequently, it is their misfortune, but it is to the benefit of the State that they should be there.

Q. I was only trying to reconcile your arguments in the two instances, and I disagree with you in regard to what you call the new school of political economists, that desire to lease rather than grant. The lease theory is as old as Adam, as old as the Bible. A. We have always leased lands.

Q. The Crown lands under the old English common law were never sold ; they were always leased ; not until you get into this country after the revolution do you find anything like the sale of the Crown lands? A. I jotted down a note or two here, that if any changes are made, I would suggest that when leases are made, it might be a wise policy—I don't say that these are my views. I believe that the present policy is sound and right, and I believe it is acting beneficently, but if they are bound to make a change, and leases are made so as not to be convertible into grants, they should be for long terms, and at reasonable figures, and if possible an assurance against the lessee being soaked, to use a common but very expressive term, at the end of the lease. Perhaps it might be pertinent to call the attention of this Committee to the possibility of very important developments as to the islands and shoals in New York Bay. There have been of late years some movements in the

direction of acquiring those islands, and of acquiring the State's riparian property. It might be well if the Committee would look into that a little. I would suggest that there is room there for millions of dollars' worth of interests to be secured to the State. If the State wants to go into the improvement business, it might improve those shoals.

The general government secured a grant from the State not long ago for additional land around Ellis Island, recognizing the right of the State to the land under water in New York Harbor inside of our boundary line. They paid us for it, but I don't think they paid us enough, not by a long shot. I tried to get more.

Another matter: there are a lot of pound fisheries on the New Jersey coast that take up a lot of land that belongs to the State of New Jersey, if we own to the three mile limit, as we asserted in the law we passed this winter, and I don't see any reason why this point should not be brought within the purview of the Riparian Board.

Q. Have you given any thought to the oyster and clam industries down in Barnegat Bay? A. A little. I myself doubt a little whether the State can pass any law, as has been suggested, limiting the power of this Riparian Board over lands under water in those sections. I doubt whether any oyster law, or anything in regard to oysters can be enacted by this State constitutionally, limiting the right of the State and of the Riparian Board to dispose of the land legitimately within the limits of the riparian property, that is to say, out to the bulkhead or pier head line, because the constitution provides, that when any property or money is devoted to the school fund, it shall be sacredly preserved for that purpose, and cannot be diverted to any other use, under any pretense whatever, raising oysters or anything else, and an act has been passed devoting that property, the riparian property of the State, to the school fund. Therefore, the Legislature, in my opinion, I don't propose to be a lawyer—but I hope I have a little common sense—it seems to me cannot pass a law diverting, under the pretense of cultivating oysters, any part of this riparian land.

I don't think it is an exigent or important question at all, but you asked me what I thought about the oyster business, and that has occurred to me.

Q. I inquired because I received some communications from people in that neighborhood that grants had been made of such lands. A. Yes; our secretary has asked them to send specific information; or we have asked the Attorney-General, I think, for them to

prepare and submit specific information as to that. I question very much whether we granted any lands that can be questioned.

BY ASSEMBLYMAN REED.

Q. Do you think that the State can be benefitted by interfering with the land in the Atlantic Ocean? A. I think it might.

Q. In what way would they take advantage of it? A. I will tell you: I think under the present system the pounds are rapidly screening our Atlantic coast waters from fish. There are such a lot of them, and I think it would be well for the preservation of our edible fish resources of the Atlantic coast to have those pounds brought under some sort of State supervision.

Q. I thought you meant as to the protection of riparian lands? A. Well, placed in charge of the Riparian Board, we could compel them to take out licenses for the location of their pounds, and then we would see that they complied strictly with the terms of their licenses. I don't mean to take any attitude of hostility toward the pounds, but I think it would be well for the State, since they are on State's land, to bring them within its supervision, for their own sake, for the sake of our fish supply and for the public advantage.

ROBERT WILLIAMS sworn. Examined by Mr. McCarter.

Q. You are a member of the bar of this State? A. Yes, sir.

Q. You are also a member of the Riparian Commission? A. Yes, sir.

Q. How long have you been a member of the Riparian Commission? A. The appointment was made May 17, 1904, and our first meeting for organization was May 26, 1904.

Q. You meet in Jersey City regularly? A. Our regular place of meeting is Jersey City, and we often meet at Trenton with the Governor, and make visits to different localities, and meet there.

Q. Have you any personal view as to the proper location of the Riparian Commission's office, as between Trenton and other places? A. The question has come upon me rather suddenly. I haven't thought of it.

Q. You haven't any views on that then? A. No particular views.

Q. Have you any views on this great question as to the comparative advisability of the Commission making sales of land or leases; if so, state them. A. Before I became familiar with riparian matters, the abstract proposition that the State should only lease its lands, seemed to me to be feasible; but after I became familiar with matters, and gave it considerable thought, such a course seemed to me would only have the effect of increasing the value of the land already conveyed by the State at the expense of that which

was still unsold ; and this would also retard the development of the property. Such a course, I believe, was pursued by a former Board for quite a lengthy period, and during that time not a single application was made for a lease, or anything done.

BY SENATOR MINTURN.

Q. Would not the increase in the value of the leases be reflected in the increased taxes in the community ? A. I should not think so.

Q. That is the argument in the paper the last witness has read. A. Under the law of 1891, under which we acted, it provides that we should not be compelled to give leases convertible into grants, but we should lease or convey as we thought best for the interest of the State ; that is, a majority of the Board together with the Governor. I think that clause, "as the interests of the State may require" should be taken in a broad sense, and we should look to the development of the State as a whole, and we should do everything in our power to encourage the development of the State. Take, for instance, some applications along the Hudson river. The testimony before us shows that almost as much money was required to fill in those lands—I don't know how much, $80 per foot, I think—as the original purchase price. Suppose those people could not obtain a grant, but merely a lease, and they wanted to borrow money on mortgage for their work ; they would not be able to borrow any money unless they had grants in fee.

Q. Why do you say that ? A. Because I don't think any corporation would loan money on leasehold property.

Q. Isn't it done every day in New York ? A. I don't think that is a parallel case.

Q. Why not ? A. Not at this late day—if this policy had been pursued from the beginning it might possibly have been done ; but I believe the proposed policy of the State, as to leases for a term of years only, was to consider some kind of a lease which would be renewed at different terms, and under that uncertainty, I don't think any corporation would improve property or be able to borrow money. I want to ask a question right here, probably the Chairman or the Senator from Hudson can inform me. It has just come to me. Do you know who pays the taxes on lands which have been leased in perpetuity, and not converted into a grant, and the property has been improved ?

SENATOR WAKELEE.—Are you asking the Committee that ?

MR. WILLIAMS.—Yes.

SENATOR MINTURN.—I imagine from Mr. Cloke's argument that the State pays it.

MR. WILLIAMS.—The State?

SENATOR MINTURN.—I imagine so; I don't know.

MR. WILLIAMS.—I don't see how the State can pay the taxes.

SENATOR MINTURN.—Mr. Cloke's argument was, that if the State were to lease, the State would be out so much taxes, that the State owning the land could not tax itself.

MR. WILLIAMS.—I am not speaking of the State. I am speaking of the community.

SENATOR WAKELEE.—I understand in the leases that are convertible into grants, the persons pay a certain rental to the State and I don't think they pay any taxes in addition.

MR. WILLIAMS.—Now, then, in case a large manufactory is built upon that grant, are they taxed then?

SENATOR WAKELEE.—That presents a complication that may arise.

MR. WILLIAMS.—I suppose the community assesses the tax upon the idea that a convertible lease is almost a fee? Now, take the proposition of a lease, and the State holding the fee, and giving a lease. I don't see how anybody would pay any tax. If you tax the lessee for those buildings and improvements, he would say, "You can't tax me; I don't own them."

SENATOR MINTURN.—Don't the present tax law require that there shall be a differentiation made on the land and buildings on the same land?

MR. WILLIAMS.—But they are assessed to the same person.

SENATOR MINTURN.—But they are separate.

MR. WILLIAMS.—Yes; but when a person has built on land, it is the owner of the land who owns the building.

SENATOR MINTURN.—That would not make any difference in the result.

SENATOR WAKELEE.—The point is that the buildings become real estate and the land is owned by the State.

MR. WILLIAMS.—I am only showing a complication which would arise if the State merely gave a lease.

SENATOR MINTURN.—That is done in California today, in San Francisco and in the City of London. It is done right along in England.

MR. WILLIAMS.—I only asked the Board for information.

MR. CLOKE.—May I ask a question right there? In the case referred to, is the ownership by others than the sovereign power?

SENATOR MINTURN.—No, not in the City of San Francisco.

MR. CLOKE.—Is not the city the sovereign power?

SENATOR MINTURN.—Undoubtedly it is a branch of the government. The city itself cannot tax, but must receive its power to tax from the State.

MR. WILLIAMS.—I didn't expect to enter into a controversy ; I merely asked for information. In case such a course as to leasing only for a term of years was determined upon we would not know where the taxing power lay.

BY SENATOR MINTURN.

Q. Would it not be entirely a matter of agreement between the State and the lessee? A. I don't see how the State could make it.

Q. By legislation it can ; if you admit that the constitution gives that power, why can't the State enact that the Riparian Commission make leases as they think proper in the interests of the State? A. Who would they assess and tax? I didn't expect that this would bring up a controversy, when I made that statement. There is one suggestion I think I can make about the present laws ; they seem to me to cover the ground pretty fully, with one exception. I think this perpetual lease is nothing more than a perpetual option of sale, convertible into a grant. I think that is for too long a period. I think if a law was passed limiting the period to twenty years for which any lease was given, either a simple lease or a lease convertible into a grant, I think it would be far better than a perpetual lease.

BY SENATOR WAKELEE.

Q. I haven't heard yet what is the advantage of this lease convertible into a grant; why should it exist that way? A. It is merely an option ; it is not a lease.

Q. It allows a person to get an option ; is it not an injustice to the State? A. Yes; I think it is. I think the option should be made for a shorter period. The limit should be made twenty years.

Q. I think it should be limited. A. Yes. I have no other suggestion except there is one piece of testimony which might be considered a reflection upon the present Board.

BY MR. McCARTER.

Q. You may state what you desire about it. A. In the testimony of Mr. Shamberg, he was asked a question by the Attorney-General: "Have you ever yet received a grant?" and Mr. Shamberg said, "No, I have not." That might be construed as a reflection upon the present Board in not attending to its duty. I want to explain about that. The application for this grant was not made until July, 1905, and Mr. Corbin appeared with him, and after discussion, the matter was laid over for an examination of the property. This Board then examined the property, and at the next

meeting of the Board the request was made by Mr. Corbin that the matter be laid over again. At a meeting of the Board in September, when this matter came up with others, another letter was received from Mr. Corbin, requesting that it be laid over again, but notwithstanding, we fixed the price of this lot at $150 per foot. The matter still lay dormant until this year when another request was made by Mr. Corbin that the matter be laid over. Mr. Shamberg could have gotten the grant at any time by agreeing to our price of $150 per foot, which would amount to $240,000, instead of $80,000, which, he said, he was willing to pay to the other Board. He would have to pay $160,000 more by waiting. There was a license made to the Shore Line railroad by the former Board, that was set aside by the Court in April, 1905. They made another application to the present Board for a license. Our Board, knowing the law in the case, that six months' notice was required, this having been decided in the former case, not only notified Mr. Shamberg and Mr. Corbin personally of this application, but directed the Secretary also to notify him in writing of that. A month or two later Mr. Shamberg and his counsel made application to this Board, about July, 1905, for this grant, and they were notified that application had been made by the railroad company. When the six months were up, the railroad company having given notice, made application for the grant. This Board has refused the grant and still does refuse it, and I don't think it will ever make it. That is the situation now. The State now holds this property at $240,000, without any incumbrance on it. The license is not granted.

BY SENATOR MINTURN.

Q. The point I was making was, so far as the price put upon it was concerned, that it bears no relation by comparison to the price put upon other land in the immediate vicinity? A. You are referring to former Boards?

Q. Yes. A. I am referring to the present Board where we fixed $240,000. Mr. Shamberg said he hadn't yet received a grant; and I wished to explain that he hadn't received it, because he hadn't paid the $240,000, and his statement might be considered a reflection upon the present Board.

Q. On the contrary, the action of your Board is to be commended.

MR. McCARTER.—We will depart a little from the usual course and call upon Mr. Edward A. Horner, the Superintendent of the Ocean County Oyster Commission, who is here, and who is anxious to get away.

EDWARD A. HORNER sworn. Examined by Mr. McCarter.

Q. Where do you live? A. Tuckerton.

Q. What position do you hold in the Ocean County Oyster Commission? A. I am superintendent.

Q. You have requested permission to come before this Committee to express some views you entertain touching the policy of the Riparian Commission in reference to oysters. Will you please state them? A. Not exactly that. I complained to the Attorney-General, and I was invited to appear here.

Q. Either way you wish to put it; please state your views to the Committee. Anything you have to say about riparian lands, particularly in reference to the oyster lands of Ocean County. A. The year this law was passed, in 1902—

Q. The oyster law? A. The Ocean County law. In 1903, J. W. Parker—the 1902 law provided for the leasing of the land and J. W. Parker and Brother in order to cover a large scope of land there and dispossess the present holders, made application to this Board for a grant.

Q. That is, to the Riparian Commission? A. Yes. They received a grant notwithstanding the protests made by myself to the Riparian Commission in the State House, and dispossessed these holders and worked an untold injury to these people.

They simply drove them off the earth. They said "We bought the land from you, and we will give you so many days to clean up and get out." Under the law of 1902 this land was to be leased by the Ocean County Oyster Commission for an annual rental.

BY SENATOR MINTURN.

Q. This was at Tuckerton? A. Yes, sir; that occurred in the closed season for handling oysters and these people were compelled to sell their property to others at a sacrifice and put them on other ground. When the time limit expired they took possession of the ground and drove the former holders off.

Q. When was that? A. In 1903. We will now move around on the natural seed-beds set apart by the State in the Mullica river. Mr. Watson and Joel Sooy, perhaps the names are wrong, but one is Watson Sooy—received a grant from the Riparian Commission for a large tract of land. I don't know how much. There are no well-defined marks, simply a few oyster stakes, and they have taken possession of the tract there nearly two miles long. This ground the State in former years had appropriated money for and placed shells there for the purpose of propagating oysters. I understand the fee was $1,200. If that is the policy of the State,

which we oyster people don't understand it to be, to sell these public grounds—they are set apart by the State as public oyster grounds, if that is the policy, the price is ridiculously low. I will give $5,000 for it today, and consider I have got a mint. Mr. James A. Gale received a grant adjacent to this of Mr. Sooy for $250. I will give $1,500 for that. Now I issue a license for the people to work upon these public grounds. I received this fall in September $1,250, and paid it into the State for license fees for these people to work there—something which don't exist. You can imagine my position after giving them a license to work these grounds.

BY SENATOR WAKELEE.

Q. The people who obtained these riparian grants, were they the owners of the upland? A. That I don't know; I understand they are.

Q. How near to the uplands are the lands referred to? A. They are adjacent to the upland, I should imagine. I never measured it, perhaps a thousand feet, and from that in to a very narrow strip.

Q. These people who took the grants, are they using this land for any other purpose? A. No, sir; absolutely not. I say, if it is the policy of the State to dispose of these grounds, they can be leased annually for the price that the Riparian Commission received for the sale of them in fee simple.

BY SENATOR MINTURN.

Q. Were these grants made by the Riparian Commissioners? A. Yes, sir.

BY SENATOR WAKELEE.

Q. When was the last grant made that you know of, covering those lands? A. The early part of this year, 1906.

BY MR. McCARTER.

Q. Won't you explain to this committee what the functions of this Oyster Commission are, of which you are the superintendent?

SENATOR WAKELEE.—We, in North Jersey have been voting almost every year for oyster commissions, and we don't know what they are doing. A. The State pays the commission to protect these grounds, and the policy is wrong to protect or pay for the watching of these grounds, and then to dispose of them in this manner. It is a waste of money to pay for the protection of these lands if they are to be disposed of in this manner.

BY SENATOR WAKELEE.

Q. Do you sub-divide these grounds? A. No; they are set apart as public oyster grounds, and have well defined lines.

Q. Whoever gets there first has them? A. No; whoever gets there first in the open season, that are provided with license.

Q. The same as the fishermen locate themselves? A. Yes, sir.

BY SENATOR MINTURN.

Q. The fact is, that all these people known as oystermen, and their ancestors for generations, have made their living out of this business? A. Yes, sir. I grew up there and my grandfather before me.

BY SENATOR WAKELEE.

Q. Where does the State get any return for the money it spends? A. They get it back from the licenses.

Q. What is that for? A. A tonger's license is $2.50 per man, not a boat. If a boat has a dozen men she has got to take a dozen licenses.

Q. Nobody can pick for oysters unless he has that license? A. Yes, sir.

Q. That goes to the State? A. Yes, sir.

Q. I have often heard the statement that the money which the State expends in support of this Commission comes back to the State in some way or other, and I never quite understood how it did come back. A. There are three counties that unite upon this, Burlington, Atlantic and Ocean, and Ocean, I think, occupies the smaller part. I issued 500 licenses, $1,250.

BY MR. McCARTER.

Q. Every year? A. That was this year. The licenses are good only for a year.

BY SENATOR WAKELEE.

Q. Who decides where the State money shall be spent for seeding oysters? A. The law says it must be placed on the ground set apart by the State as public seeding ground for the propagation of oysters.

Q. Who sets those grounds aside? A. The State.

Q. The law sets them apart? A. Yes, sir.

Q. And it is part of those lands set apart that the Riparian Commissioners have sold to these parties? A. Yes, sir.

BY SENATOR MINTURN.

Q. The position you take is this: if the State were to sell these lands under water on the bay and on the oyster rivers in South Jersey, it would practically drive out of business this vast number of men who make their living, and whose ancestors made their living, out of that kind of business, under the license of the State? A. Yes, sir; there are two commissions. The Atlantic County Commission and the Ocean County

Commission. I issued 500 licenses and I allow the other commissioner issued that many more. There must have been a thousand people there this year working.

Q. We had some difficulty with the shad fisheries along the Hudson river ; they used to have shad fisheries there, and gradually as commerce comes in the shad fisheries are driven up the river. A. I say if it is the policy of the State to dispose of these grounds, put them up to the highest bidder and get their value and discharge the Oyster Commissioners.

BY MR. REED.

Q. How many less licenses have you issued because of the granting of these grounds? A. That I don't know. I don't know when the grants were made.

Q. How many would you think? A. Several hundred. I would just as lieve have been down in Cuba. The people are all up in arms. You can imagine these oystermen—we issue lots of them to people who come from a distance. We go on the grounds among them and get them, and never had any trouble until after these grants had been made, and they said it was cruel and unjust to force them to take a license, and half the grounds they are deprived of working.

Q. You think there are several hundred affected by it? A. Yes, sir ; more than one thousand people are affected.

BY SENATOR WAKELEE.

Q. If the owners of the upland purchased, as they have, some of them the land under water from the Riparian Commission, does the State assume to compel those people to take out licenses? A. No, sir.

Q. They don't require any license? A. No.

BY MR. BARBER.

Q. Did the Riparian Commission notify you that they proposed to dispose of these lands? A. No, sir ; never heard of it until they reared up the stakes ; never knew it before. I hold in my possession an abstract of the correspondence of the adjoining Commission with the Riparian Commission. The gentleman expected to be here today, but he failed to come, and he sent me this document to make any use of it that I wanted to. They protested, but it was of no avail.

BY MR. McCARTER.

Q. What Commission is that? A. Atlantic County Commission.

Q. We are very glad to receive it. That is all.

SENATOR MINTURN.—Do you think it was within the purview of the Legislature when they passed these riparian acts, that

the Riparian Board should have the right to rent lands for the propagation of oysters?

MR. McCARTER.—I would refer you to the case of Polhemus vs. Bateman, where the Supreme Court decided that question, but how they decided it I have forgotten. They decided as to the relative rights of the oyster people and the riparian grantees. Does the Committee desire this correspondence spread upon the minutes? It is from Mr. Albertson, the Oyster Commissioner of Atlantic County, and I imagine is designed to express the view of Mr. Albertson on this subject. I should think if it were of enough importance for Mr. Albertson to write a dozen pages about, he ought to come here, and I suggest that he be written to. A. He is in court; that is the reason he didn't come.

SENATOR WAKELEE.—Can he come here some other time? A. Yes, sir.

Q. That is all.

P. SANFORD ROSS sworn. Examined by Mr. McCarter.

Q. You are, I think, the head of the corporation of P. Sanford Ross, dredgers, dock builders, etc.? A. Yes.

Q. How long have you been interested in the riparian lands of New Jersey? A. As a contractor I have been improving such lands myself for about forty years, and my uncle as many more years preceding me.

Q. Do you own or are you interested in tracts of land, parts of which have been obtained from the Riparian Commission? A. We own two tracts, or at least I do.

Q. Where are they? A. Lands under water obtained from the Riparian Commission. The first piece purchased I think was in about 1882 or 1883 at Fort Lee, and two years later a piece at Edgewater.

Q. Have you any interests on the Passaic river? A. Yes; we have an interest. Senator Wetmore and I own quite a large tract on Newark Bay, but the water rights there were acquired from the Board of Freeholders before it was turned over to the Riparian Commission.

Q. You have given some thought and attention to the purchase and acquisition of riparian land? A. Considerable.

Q. Have you any views as to the propriety of the State either making grants or leases? A. Yes.

Q. Will you benefit the committee by expression of those views? A. To those people who own their water fronts by grant, in a finan-

cial way, I consider the stopping of making grants would be an advantage to them, make their lands more valuable. I think it would be a bad thing for the State to decide to make no more grants and merely make leases, for the reason that improvements to these lands are very expensive. The bulkheading and filling would represent three to four times, and may be five times in some cases, the value of the grant purchased from the State. The improvements are generally very important work, costing hundreds and thousands of dollars, and sometimes running into millions of dollars, and the people who want these lands want them for large manufacturing and commercial interests, and have to make or should make permanent improvements. If they own the land they would not hesitate to make such improvements. If they were not able to buy the land under water, but only to lease the land, even though it were for a long term, I think the tendency would be to make as economical improvements as possible, what might be called temporary improvements, which would not certainly be as attractive as more permanent improvements, and would be less valuable.

Then, again, it would not attract large interests to our shore if they could be accommodated elsewhere, as they could be in Staten Island and at Newtown creek, although that is pretty well improved.

Now, on the shore of Long Island and at Mott Haven, there is still a large property to be secured. The tendency would be to stay away from New Jersey, although their preference would be to come here.

For instance, the riparian tax, the property owners have always felt that it was an unjust tax, and I have seen the effect of it in the last thirty years. I have had people come to me to know where they could locate on the Jersey shore to establish a manufacturing or commercial interest, and I have referred them to different places, and they have asked the value of the property, and I have given them my judgment that it could be bought for a price which appeared to them reasonable ; they said they would look at it ; and I said, "There is another matter to be considered ; after buying the land you have got to buy the riparian land from the State." I have explained it, and about what price was asked, and they said, "We won't look at it;" and I have known them to go to Staten Island and Newtown Creek, and Newtown Creek has been improved at the expense of New Jersey. Two small creeks, one called Whale Creek and the other Dutch Creek, which were not as important as Bound Creek is at Newark Bay, and they have been widened out and deepened, and factories have been built there, and the Government, with those industries there, has deepened the main channel and made it navigable. As to the location, there is no comparison with the

North River, where we have no bridges. There they have several bridges, and the East River, which is a very swift water course and a very busy river. The North River has no obstructions, yet our property on the west side of the Hudson River has lain dormant, most of it. Now, the greater portion of it is in a crude state, without improvements. But gradually large interests have come and located, and the people have become educated to these different raises of riparian prices, but the individual owners have very rarely taken the grants.

I took these grants of mine because I was familiar with water front property, that being my business, the improvement of it, and I was able to improve my water front property gradually and economically. In the removal of large old docks in New York and Jersey City and Hoboken, I was able to save a great deal of material which was sound, and which I collect on my property, and gradually improve it with that material, which cost me nothing.

So I have been attempting to improve this property, taking long periods. I guess it took me eighteen years to build the structures on the Fort Lee property. It was necessary to have deep cribs there, and while I have got that property improved, I haven't any use for it except what I can do in the way of storage. I am ahead of the times. I had hoped that some industry would come along and rent that property, but we have no railroad connection yet.

BY SENATOR MINTURN.

Q. Why do you say rent it? A. I would like to retain it; the growth in value would be large.

Q. Why can't the State do that? A. It could, if it improved it; but that would represent an immense outlay of money.

Q. Don't you think, if you hadn't taken it up, somebody else would? A. No; plenty of it either side of me that has not been taken up. There is no structure there except the little powder dock; there is no dock within five miles, four miles of me, I think.

Q. Still you have spent a lot of money in improving it? A. For the future.

Q. You are waiting for some individual to take it in the future? A. Yes, sir.

Q. Why do you draw a distinction between the State and yourself? A. Because I don't believe the State would feel like investing the money in improving the property. They would have to buy the shore property first, then make the improvements, and as I say, the bulkheading and filling represents from four to six times the value now set upon the land under water by the State. For instance, I heard a property mentioned that the State now wants $150

per foot for, land under water. It will probably cost to bulkhead that property and fill it $450 additional, per foot.

Q. The great value of your property at Fort Lee, in my judgment, is not the land back of it, or the ripa, but the advantage you possess in holding a monopoly of the river front? A. At that point you mean? The value is in acreage that I have made there out in the water, and the structures I have built there; the improving of that front and the filling in of the land which was water.

BY MR. REED.

Q. How much have you filled in there? A. About twenty acres.

BY SENATOR MINTURN.

Q. When did you buy that? A. I think 1882 or 1883.

Q. What did you pay for it? A. $5 per foot.

Q. What is it worth now? A. I don't know, except that at Edgewater, probably three miles away, I have another piece. I think the last price I heard of the Board asking was $75 per foot. Of course, that is more valuable property because there is a road back of it. At Fort Lee we have no road; we are right against the Palisades.

Q. How far from your property is this Shamberg property? A. That, I should say, was four to five miles below.

BY SENATOR WAKELEE.

Q. How far is the bluff back from your made land? A. Before we made any land we had a very narrow strip, probably not over a hundred feet, maybe not that.

Q. There is no road there or any way of getting there? A. No, we hope for this Edgewater railroad to get there.

BY MR. McCARTER

Q. Right in that connection, I would be glad if you would favor the Committee with your views as to the advantage of this Edgewater railroad or other railroad facilities being afforded to this land; give the pros and cons of that situation? A. I have been trying to get a railroad there since the West Shore terminals were built. We built them for the West Shore, and since that time I have been endeavoring to get a railroad along the shore, with other property owners along there. We formed a committee to urge that matter, and at one time thought of building a road ourselves down to connect with the Susquehanna. Then we concluded that they would have us in a pocket, and we could not afford to do it. But we have been urging the company to build a railroad, so much so that the large property owners offered a 30 foot right of way if they built it. I went to the manager of the West Shore, back in 1884 or 1885, and asked him to extend their railroad up. He said if the property owners would give the right of way he would build it.

I said if he waited for that he never would build it. The large property owners would do it. The last effort was with the Susquehanna, in getting them to extend their road, and they agreed to extend it part of the way up. They are anxious to extend south from the Susquehanna, because there were some factories there to get business from. North of the Susquehanna there were no factories and no business. I argued that then there would be business. The people would come there after the railroad; they wanted a vessel in the front yard and a railroad in the back yard. But we haven't any improvements—well, just a few—immediately north of the Susquehanna, but we haven't any above the ferry which comes over at 130th street. I went to the Riparian Board when the application was made for this grant—

Q. That is the Edgewater Road? A. The original grant, and urged in the interest of the property owners that that grant be made for nothing. I said the property owners are willing largely to give the right of way. I was willing, and there were several others there, willing to grant 30 feet right of way, and we thought the State ought to do the same thing, for the reason that it would increase the value of the State's land under water. If the railroad was there they would get more money for their grants than they would without, and the property owners who didn't own the water front, the increase in the value of their land would pay them.

After our arguments were made I left. I was afterward telephoned for to come there, and the Governor presided at the meeting and he said that the Board felt favorable to granting this license, but not for nothing. They didn't think it was a good precedent, and had concluded to make the price small, nominal, $500 per acre, and asked me what I thought of that. I told them that perhaps it would be a bad precedent to grant it for nothing as the property owners or some of them had done. I thought it was all right. They said, "We think that a limit should be made on this grant; we don't want to give a grant for this purpose without having it limited, and we think two years would be a proper limit." I told them I thought that was all right, and it was passed that way. Afterwards the two years were used up without the road doing anything north of the Susquehanna I was told they spent about a hundred thousand dollars working on the south; they were getting to the factories where they could get freight business, but did nothing for us at the upper end, and when they then applied for a renewal, I know the Governor spoke to me privately about it, and he said that he didn't like it, their not having built this road, and that he felt they ought to pay more money for it if they had the renewal.

I being anxious for the road, and expressing as I thought the feeling of the property owners, I told him I didn't hardly feel that way; I thought they ought to be given an extension because the Erie was not a rich road, and they had spent a hundred thousand dollars in extending south, and they undoubtedly would build north, and I thought they ought to have more time.

I didn't appear before the Board at this time, but I suppose they got an extension. I think they did. We haven't got a road there yet, although they have condemned two pieces of property, the Ellis property and a mill property. That is, they have had the Commissioners appointed, and the awards have been made. They have appealed, I understand, but I suppose they will have to go on and take that property.

BY SENATOR MINTURN.

Q. Was Mr. Shamberg consulted in that matter? A. He is below the Susquehanna; that is another road. I don't know whether that is the Central, or the Erie, or theWest Shore.

BY MR. McCARTER.

Q. As a property owner, apart from the benefit that you think will come from the opening up of your property by a railroad, leaving that out for a moment, what effect will the use of a right of way by a railroad between the upland and the water, have upon the property? A. Of course, we lose that much of our land, but I am willing to lose it and give it away for the purpose of having a switch from that railroad on to my property, so that I can either sell my property to better advantage, or I can lease it quickly, no doubt, to an interested party who wants to locate and do business there. But it is hard to get them there unless there is a railroad there, or they can be sure that a railroad will soon be there. That is the only way the meadow property on Arthur Kill was improved, by the Central railroad first building a railroad there. Then the factories came there very rapidly. They got tidal rates, as I understand it, the best rates, and they got the land cheaply, and they are expanding all the time, and our Hudson river property is better property than that. We have the ferry to New York, which is very convenient, yet it is dead property.

I think what the State might make—granting that they made more money by leasing if they got the benefit of future values—I don't think that is so great, I think that would deter people from locating there, or postpone their location there, rather than if the State sold the land under water. By a sale the growth would be so much greater, bringing so many operatives there, and the improvements would be so great that the increased taxation collected by

towns and boroughs and cities would be of more importance than the future profits the State might get by holding the lands or leasing them and expecting to get an increased rental at the expiration of those leases. That has been my thought upon the subject. My selfish thought has been that it would be a good thing if the State didn't make any more grants, because I could sell my property to better advantage.

BY SENATOR MINTURN.

Q. Don't you think if the State under proper legislation were to extend an invitation to business interests to come over and locate on our side of the river free for a certain period of time, and after that time under leases renewable at certain intervals, that would cover the objection that you raise to leases? A. They might come, but they would not make the substantial improvements that are made. For instance, our depth to hard bottom on the Hudson river is very great in most places, and to make substantial improvements and retain the filling we have to build crib work of timber and stone, which is very expensive, in many places $150 a running foot, just for that structure. Then there is the filling in and the dredging, and what structures you have to make.

Now, a man locating there permanently, he will make that a permanent structure, but on a lease he will make a piling structure and put light buildings on there. That structure will rot down inside of twenty years with constant repairs; the bulkhead never rots down, the solid piling never gets away.

Q. Suppose he was assured or guaranteed by proper agreement between the State authorities and himself, that at the end of a certain period of time, under his lease, if he didn't renew his lease he would be allowed for his improvements a certain figure, to be agreed upon by arbitrators; don't you think that would give him the necessary security? A. No; because his improvements have been made temporarily, and they would not be worth a great deal.

Q. No; my point is, will he make temporary improvements if you give him the necessary assurance that at the end of his lease, if he does not secure a renewal, the State will pay the value of those improvements, according to arbitration? A. Yes, if the value of the permanent structure and filling was paid back to him at the end of his lease, if he was guaranteed that, I think that would be a very strong point to protect him.

There is one other thing that he would be afraid of, and that would be the renewal. The Commission fixing the value of his land at the end of twenty years, would they not take into consideration the improvements he had made and the increased value of the

property, and would he not be afraid that the fixed rental from that time on would be so great, that instead of going there, he had better stick to New York, where he has no riparian rights to pay for, and where he owns the property forever?

Q. Suppose you separate the improvements entirely from the valuation; suppose you say at a certain period of time when that lease expired, the rental shall be fixed not upon the improvements, but upon the value of the land as it then stands? A. The lands would be part of the improvements that he had made.

Q. No, not at all; they are separately taxed. A. But he has made this land. Take my case. I have gone from the main shore; I have the right at Edgewater to go out 1,100 feet. Now, when that improvement is made, why that is all land.

Q. That is improvement? A. Yes, but it is land.

Q. But suppose the State were to provide in its agreement that you should be allowed at certain intervals the value of your improvements? A. Including the land I have made?

Q. Whatever is improvements, and I would consider that improvements; you spent your money on it and are entitled to be reimbursed. Do you think that man would not have the necessary security to justify him in coming over and making the improvements? A. Yes, sir; except as I have stated; that he might have the fear of the increased rent.

Q. The rent would be based not upon his improvements, but upon the increased value of the land? A. The improvements have made the increase largely.

Q. Not entirely, the coming there of population, the purchase of other lands around there. A. Well, together; yes.

Q. I am only discussing the matter of improvements because you are familiar with that phase of the question. A. Yes.

BY MR. REED.

Q. How far is your property at Fort Lee from the nearest railroad? A. About three miles above the Susquehanna terminal, and that is the nearest railroad point now. It may be between three and four miles.

SENATOR WAKELEE.—We were up past your land on Saturday.

MR. McCARTER.—That is all I have to ask of Mr. Ross. It struck me that his views are quite important, because his interests are the other way, but he has given us his views as a citizen.

SENATOR WAKELEE.—I think that would be largely true of land on the Hudson river, because there is a large portion of it left in the hands of the State.

A. Above me, the Edgewater property, the State has a mile and a half unsold, and by the location of the present line of filling, the Harbor Board of the United States have made the old pier line the solid filling line so that that property you can fill in for a 1,000 feet from the shore, which makes it very valuable water front property and it has increased in value to the State. Of course, the State in considering the value of a piece of property, they consider how far out the property owner can fill, and of that property very little has been sold by the State. The State owns most of that land under water.

BY MR. McCARTER.

Q. That is between the State line and what point? A. The Harbor line for solid filling.

Q. North? A. North of Edgewater.

Q. That is all.

At this point a recess was taken until 2 o'clock.

After recess.

CALVIN TOMKINS sworn. Examined by Mr. McCarter.

Q. You are, I believe, the president of the Newark Lime and Cement Manufacturing Company? A. I am.

Q. And have some riparian property in Newark? A. Yes.

Q. Have you given any thought, either as a citizen or as a man interested in that company, or as a riparian proprietor, interested in riparian property, to the subject of the propriety of the State selling rather than leasing, or leasing rather than selling its riparian lands? A. I have.

Q. Will you be good enough to give the Committee the benefit of your views on that subject? A. Yes; perhaps it would be in order to state my own position first, and then consider the subject in its wider relations.

Q. Very well. A. We are engaged in the manufacture of plaster at Newark. We want a larger place. We have worked up to the capacity of our plant, and we expect to take our plant down the river to the Plank Road bridge, and I have arranged there for a large tract of land, 22 acres. In case we secure the riparian rights in fee, we shall erect a large plaster plant there. If we do not, we shall, in all probability, erect our plaster plant on the Hudson river, where we have other interests, about 30 miles up—a location not so desirable—but which we completely control.

Q. And that is not in New Jersey? A. No; it is in Rockland

county, New York, where we have quarries at Tompkins Cove. We secured this Passaic property last spring with the expectation of utilizing it for this purpose; this we did after looking over the sites in that vicinity and in the vicinity of Jamaica bay, on the Harlem, and at other points. That is my direct personal interest in the matter.

Now, aside from this personal interest I have given much consideration to the general question of the utilization of the meadows. I consider it is an exceedingly important matter, and, with the permission of the Committee, I would like to call attention to a few facts as they have presented themselves to my mind.

BY SENATOR MINTURN.

Q. Where is your plant? A. At Newark. I am interested in another plant at Tomkins Cove, New York, a stone crusher, and we have gypsum quarries and mills on the Bay of Fundy.

Q. What is your Newark plant? A. A plaster plant, to which we bring the raw material from the Bay of Fundy, and after manufacture send it out by railroad and water.

Colonel Livermore, United States Engineer in charge of New York harbor, in a recent report which he made to the general government, states that hereafter the waters of Newark bay, the Hackensack river and the Passaic river should be considered a part of New York harbor and so treated by the government. The United States Government is now making a survey with the probability of making a favorable report advocating a further deepening of the Passaic river channel to 20 feet in place of the present 12 foot channel, at low water.

In this connection, I think we should regard the Newark meadows as part of the great commercial and industrial city that surrounds New York harbor, and of which the northern counties of New Jersey and New York city are all component parts. As to the use of these meadows, to my mind they are the most valuable commercial asset in the vicinity of New York harbor, provided they shall be properly utilized for industrial purposes. We must remember that we have here two large river channels discharging into a broad bay which is second only in importance to New York bay. (See map.) Every line of railroad in the United States, with the exception only of the line of the New York Central system, and the New England systems of roads, traverses these meadows. In other words, nearly all the trans-continental traffic of the United States reaches the port of New York by crossing these meadows and these rivers. Consequently, there exists here the best opportunity for connecting the water born commerce of the port of New York

with the railroad commerce of the United States. This can be accomplished by properly articulating the railroad systems with a suitable dock and warehouse system at the water front, and in addition, by creating a most favorable opportunity for the development of manufactures properly connected with docks and warehouses on the one hand, and with the railway system on the other.

That is to say, there are four uses to which the meadows may be most advantageously put: terminals for railroads; terminals for steamships; warehouses at those joint terminals, and manufacturing sites on the land further back, properly connected with the general terminal and railroad systems.

The water front of the other sections about New York harbor has not been properly developed. In Manhattan, the city has adopted the policy of acquiring the water front, improving it and renting it, and it has cut off the dock system from what should be the warehouse system, by a broad, wide street. Where the warehouses should be located, the ground is now taken up with sailors' boarding houses and tenements and mere subsidiary uses of the land, due to the cutting off of the water front by this wide street. This occurs on both the east and west fronts of Manhattan, and as a consequence the docks are being used for warehouse purposes as well as for dockage purposes. This limits warehousing capacity and the city must of necessity exact very high rents for the combined uses of the docks in order to enable it to develop its system. This policy is proving detrimental to the commerce of the city in many ways.

In Brooklyn, with the exception of the Newtown Creek section, the dock front is generally owned by private warehouse corporations, and there are no adequate railroad facilities until you reach the Newtown Creek section, where there are good railroad and docking facilities, and a storage system will be provided here when the Pennsylvania railroad makes its contemplated improvements.

In Jersey City and Hoboken, the railroads own almost all the water front; the steamships own some but not very much. There is no adequate connection between the terminals and railroads. There is a connecting railroad, but it is conducted in such a way as to make transfers between the water shipping interest and the railroad shipping interest and between the railroads themselves comparatively ineffective. The system is not properly put together as a whole. On the meadows there is an opportunity for properly developing steamship and railway terminals, with adequate warehouse facilities and good manu-

facturing opportunities back—properly connected with all the railroads.

It would seem to me, that instead of considering the use of these riparian lands so much with a view to the acquisition of immediate, direct revenue, that they might be more properly considered in connection with the organization of this great, natural, unused asset.

I think these meadow lands can be properly developed only through the control the State now has over them, due to the ownership of the adjacent riparian lands, and I believe this power should very properly be utilized to bring about a satisfactory railroad and water front connection with every piece of back property.

In my judgment, every street on the meadows should ultimately be provided with a State controlled railroad connection which will connect it with the general terminal and railroad systems, which should be planned for in advance. By properly organizing the meadows, which the State can do now through its control of the riparian lands, it is in a position to create the highest value and speedily get back through such increased valuations and increased taxes the revenue which should come to the State. It can accomplish this desired result quicker and better by following such a policy than by treating the riparian lands with a view of securing the most revenue from them by lease or sale. This narrow strip of land along the water is not of much value or importance even in connection with the adjacent upland. Its potential significance lies in its controlling relations to all of the back lands.

When we look at a map of the meadows [the speaker showed a map] we are impressed by certain features: You notice here are two rivers—the Hackensack river, with deep water, and the Passaic river, in which the water can easily be made deep. They come together at this point, and below you have the great harbor of Newark bay, largely flats now, but which can be dredged deep, with indentations for piers and basins. There is only one other undeveloped section of equal importance, and that is the Jamaica bay district, the industrial development of which the City of New York is now contemplating. There they have pretty much the same situation confronting them that you have. The city owns, through the riparian ownership of the old towns of Gravesend, Flatlands, New Lots and Jamaica, the riparian rights along this bay, and there is an opportunity to pump out and make basins and slips and keep them open to the sea.

It would seem to me that two situations exist which can and should be considered and treated differently, in the interests of the

State: that this riparian land along the lower bay should remain within the control of the State to a very much greater degree than the riparian lands along the Hackensack and Passaic rivers above Newark bay.

In other words, the Kills and Newark bay constitute the vestibules to the great back region of the Passaic and the Hackensack valleys, and the rivers should be considered as water streets faced by private manufacturing and warehouse lots.

If in this district above the Bay the State shall determine to insist upon a policy of lease, the effect, in my judgment, will be to retard very greatly the development of that section. It may be the best in the long run—you gentlemen must decide about that, but unquestionably, the same reasons that will affect my location here on the Passaic river, will influence other people as well. Unless they can obtain the fee to the land in front of the property they wish to improve, they will not feel that they can incur the risk of making permanent improvements. The general tendency will be to defer improvements, and, as Mr. Ross said, as far as improvements are made, they are likely to be temporary rather than permanent.

BY SENATOR MINTURN.

Q. Where will they go? A. To other places.

Q. Whereabouts? A. For instance, I shall go to Tomkins Cove.

Q. You have a place there? A. Yes; and we secured the water grant this spring, in fee, at a very moderate cost; and I think the Committee should also bear in mind the impending improvement of the Erie canal. When that canal shall have been made over into a thousand ton barge canal, the entire Hudson river valley will be much more available for industrial development, and towns like Poughkeepsie, Kingston and Hudson will be rehabilitated.

Q. Where does the Erie canal come out? A. It runs from Buffalo to Albany.

Q. That is the canal they propose to widen? A. They propose to improve it so that it will pass through barges of a capacity of 1,000 tons, the maximum capacity now being 200 tons.

BY SENATOR WAKELEE.

Q. They are going to spend something like $20,000,000? A. $101,000,000; and the contracts are just being given out.

BY SENATOR MINTURN.

Q. Take a man who has not your interest or an interest like yours already vested on the Hudson river and the Passaic river, and desiring to take up a new interest, where would he go? Suppose he is not satisfied with the leases from the State of New Jersey, where-

abouts in New York can he go? A. There is the Hunters Point section, the Long Island Sound section, the shores of Staten Island; there is the Gravesend section, which the city is about developing. I will send you a pamphlet regarding the report of the Commissioners who have charge of that. There will be very great industrial development down there. It is a very large section of country.

Q. Won't that be developed for the purpose of sale? A. It will, probably. The development will probably be conducted on the same lines that will govern the Newark meadows development. Most of the land is under water, but very shallow water, and it can be dredged out and filled in and piers made, and the place developed as a water city. In some respects this can be done more easily than similar things can be effected on the meadows. There will probably be greater difficulty in maintaining a deep water channel to the ocean than there will be here.

BY ASSEMBLYMAN BARBER.

Q. Your idea as a general proposition is, you think it would be a good policy for the State to lease the land which would be used for commercial purposes, but sell in fee the land which would be used for manufacturing purposes? A. Generally stated, that is so. I think that along these rivers it will be to the public interest to reserve at certain intervals space for public docks and also for the State to reserve sufficient control to make it possible to fill the back lands by hydraulic or tram conveyance of material. I think in the Newark bay district itself it will be desirable to have a system of leases rather than fees. The State's interest is greater in Newark bay than it is on the Hackensack and Passaic rivers above the point where they come in. Above this point they are virtually river streets, more available for private purposes than for public purposes. As a consequence of pursuing such a policy the river districts will develop rapidly and this will increase the availability of the Newark bay district as a center of commerce and conversely, by properly organizing the bay district, the effect will be advantageous to the entire Passaic and Hackensack valleys, since this great district then can be provided with adequate railroad and terminal facilities. This is the distinction I would make between the river districts and the bay district.

BY SENATOR WAKELEE.

Q. Then, as I understand your theory broadly without going into details, it is that the State ought to control this land, having in view some permanent plan of improvement and making grants in conformity with that previously arranged plan? A. I believe that it would be most desirable if the State should do that. I think that

the authority that the State could exercise through the control of these riparian grants, is sufficient to enable the State to properly organize the whole meadow section for manufacturing, warehousing, railroad and steamship purposes, and I believe it is the only way it can be accomplished. At the same time, I don't think the attempt should be made to accomplish it in such a way as to retard the developments which will come by private enterprises. I think a general plan should be adopted and private enterprise should be compelled to work in accordance with that plan. But I think it necessary that the river grants should be made in fee. I think the best interests of the State would be served in that way ; the greatest increase in taxable values would come about in that way, and if at any time in the future it should become necessary to take back part of that land through the power of eminent domain, the fact that it would then cost a great deal to do so would really be the warrant for doing what you have done, rather than a point of criticism, because that increase of value will simply reflect the many times greater increase of the value of back lands. The riparian lands are a very small but important part of a general scheme. They are important primarily as they affect the back lands.

If the State does not grant the fee of these lands to private parties wishing to improve them, the effect must be to retard improvement. I am not here to question the relative merits of either policy, but undoubtedly that will be the effect, and it would seem to me to be much more desirable that this land should be improved under a wise and broad-minded system of improvement rather than it should lie idle, as it very generally will if the State shall insist on standing between the improvements and the river fronts. The State will then really be in control of the river property, and Mr. Ross's criticism this morning that the improvements will be delayed and will be temporary in their character is undoubtedly true. I would carry the argument one step further, and say that it is a very undesirable thing for a manufacturer after he has located a plant, and brought together his organization, to even have to contemplate the possibility of moving that plant, although he should be recouped in full for the expenditures he made. It is not only the expenditure that must be considered ; there is also the contemplated disruption of an elaborate organization—this is no small thing in connection with any great industrial enterprise.

In connection with this meadow organization, there is the matter of highways across the meadows. At present there are only the Plank Road, the Turnpike and the Paterson Road, which latter bifurcates into the Paterson and Belleville branches at the Hacken-

sack. There should be more, and yet there should be no more bridges over the rivers to obstruct their navigation. In the future, some at least of the railroad bridges should be superseded by tunnels and the present bridges converted to highway traffic. If the Bay is to be properly utilized for navigation, the two lower railroad bridges should be eliminated altogether to the ultimate advantage of both railroad traffic and navigation.

The railroads recently complained to the general government that the opening of the draws seriously delayed their trains, and urged that the draws should be kept closed at certain hours. This resulted in a decision that no regulations should be made as to opening and closing the bridges until such time as the bridges be raised to 20 feet above high water, and the river be dredged to 20 feet below low water. As it is now, all the deeper craft commerce has to move at high water, and it is impractical to close bridges at any particular time without serious inconvenience resulting. It would be a reasonable requirement, however, to provide some supervision over the opening and closing of the bridges should the above recommendations be complied with.

The matter of the sewering of the meadows, the matter of the pollution of the Passaic river, the question of parks and cross streets on the meadows, all those things are connected with this matter of meadow development, and depend in a large degree upon this question of control which the State can exercise through its control over the riparian lands.

Another fact which I call your attention to is this, that the natural tendency to fill and utilize these meadows is proceeding from the cities outward, that is, eastward from Newark and westward from Jersey City and Hoboken. The rubbish, ashes and waste of the cities are used for fill and the meadows are being naturally and gradually filled up, and the cities are gradually expanding in both directions.

That, however, is a very slow process. Most manufacturers find that the rail connection alone is sufficient for them, and most new meadow enterprises are advancing either from Newark or Jersey City, as the cities expand.

Since there are comparatively few enterprises which require water and rail connection such as ours, the development along the the river fronts is comparatively slow and expensive. The method of hydraulic filling from the river front with dredged material conveyed thence from other parts of the harbor is an enterprise which necessitates great expenditure, elaborate dredging and pumping plants and long waits for returns; such expenditure of capital will

not be warranted unless the opportunities for profits are facilitated by a State policy which shall grant the fee of the lands in front of which the improvements are to be made.

I think, Mr. Chairman, that the greatest commercial opportunity which exists about New York city, exists right here on the meadows, provided they shall be properly organized. I believe that the State of New Jersey through its ownership of riparian lands controls the key to that situation, and can compel any reasonable plan of development which it shall determine upon. I think that the back lands where the greatest prospective value lies should be organized in conformity with some general plan, and that the water front should not be granted until that plan shall have been acceded to; and I believe in addition, that the lands on the Lower Bay, in view of their comparative greater availability for general commerce should be kept continuously under a very much greater degree of State control than the lands fronting on the rivers above the Bay, for the reason I have stated, which is, that the Bay is virtually the vestibule of the valleys of the Passaic and Hackensack rivers, and anything that is done to organize it most effectually should also contemplate the organization of the railroads as well, in order to compel them to work together, to provide adequate, interchangeable water front terminals and warehouses. The whole enterprise should be planned and developed in a systematic co-ordinated manner. Then the land above will be more quickly developed by private enterprise, and this will in turn tend to the rapid development of the Bay below for the purpose of general commerce.

BY SENATOR MINTURN.

Q. In reference to your application now pending before the Board, would you press that if you could only get a lease? A. No, we would not. If we could only get a lease we would not put the permanent works there. We would do something with the property, but not enter upon the character of improvements that we otherwise should. We would put our substantial works at another place.

EDGAR A. FREEMAN sworn. Examined by Mr. McCarter.

Q. You are a member of the Board of Trade of Camden? A. Yes, sir.

Q. In response to an invitation from the Committee, have you appeared to give to the Committee any views that you or the Board may entertain upon the subject of riparian grants? A. Yes, sir.

Q. Will you kindly do so? A. So far as our city is concerned, the question of riparian grants is virtually settled, because the state

has already granted to practically all our owners who own the land adjoining. So far as the City of Camden is concerned, I can say very little, but in expressing the views of the Board, and my own views, having been in the real estate business for twenty years, I would say that the gentleman who has preceded me, has just about expressed my thought and that of the Board of Trade in this matter. That in the vicinity of New York city where the value of a wharf, from a commerical standpoint, is so much greater than in other parts of New Jersey, there may be good reason for leasing, but take along our river fronts, and anywhere, where the riparian grants would be made, to be used purely for manufacturing purposes, where expensive buildings would be erected, I would be opposed to the lease entirely.

We represent the Victor Talking Machine Company in their purchase of real estate, and only this year we sold a wharf property in Camden for $175,000, on which they expect to make very large improvements. If the question of a lease came up, they would not have purchased that property under any circumstances. We must not only consider the mere cost of bulkheading and filling in, which is very expensive, but in large commercial enterprises the improvements built sometimes cost a million or two million dollars, in the furtherance of their plans ; and for the State to contemplate twenty years hence to pay out, when one individual plant might cost four or five millions of dollars, I think is a question which should not be considered from any standpoint at all. During the past five or ten years our State has had a wonderful growth, and we think we should encourage all the manufacturing plants to come here, on the most liberal and easy terms. Now, it occurs to me that you ought to give the State and the individual a fair hearing and a trial, and if the Commission should exist as it is, there should certainly be an opportunity to appeal. Without any reflection on the present Board, but in case the State or the individual felt that the award was not fair to them, there should be a judicial hearing of that case ; or in case there should be four or five applications for a particular grant, the one who would probably develop that to the greatest possible good for the State of New Jersey, by improvements, should have the preference, even though they should not pay as much for it. If we are to consider the State's interest in this matter, we should think of the use to be made of it, and if we sell these grants to any large corporations that are coming there, the amount of taxes that they are going to pay on that specific spot should have a very important bearing on that case. That is all I have to say.

MR. McCARTER:—Very much obliged to you.

ROBERT C. HUTCHINSON sworn. Examined by Mr. McCarter.

Q. You are a clerk in the Treasurer's office? A. I am.

Q. Do you hold any position in connection with the Trustees for the support of Public Schools? A. I am clerk for the Board.

Q. When did you become clerk for the Board of Trustees? A. 1894.

Q. Was that coincident with your going into the Treasurer's office? A. Yes, sir.

Q. At that time what did you find to be the condition of the arrearages on leases? A. I found a large arrearage, over $70,000.

Q. Of rents due? A. Yes, sir; and unpaid.

Q. What did you do about that? A. I took the matter up with Mr. Swain, the Treasurer at that time, and consulted with Attorney-General Stockton, and went over the matter with him, and he said there was no authority, no power in the law, to make those people pay it. Before that I had visited a number of them personally myself, and tried to get it, but I got bluffed more than anything else.

Q. Did you do anything more? A. I saw the Attorney-General several times, and when Mr. Grey succeeded him, I took the matter up with him, and it went along in the same way. And after Mr. McCarter, your brother, became Attorney-General, I took it up with Mr. Swayze, and Mr. Swayze drew a bill and it failed of passage in the Legislature that year, I think it was late in the session, and the matters were then placed in Mr. Swayze's hands, and quite a number of collections were made.

Q. At my request, have you tabulated some figures on this subject of riparian grants? A. Yes, sir.

Q. Will you please read the tables you have prepared? A. Yes, sir.

Number of leases on books	138
Rentals due	$97,466.01
Number of leases to Attorney-General	51
Amount of principal of leases	$468,985.22
Paid off this year	83,744.30
New leases this year (7)	32,532.00
Amount of arrears October 31, 1894	75,654.57

RECEIVED FROM ATTORNEY-GENERAL.

Jan. 21, 1904, Geo. L. Record and DeWitt VanBuskirk.	$5,434.67
July 20, 1904, John H. McDonald.....	226.37
" " " Margaret A. Dunn.....	12.18
July 6, 1904, Pt. Breeze Ferry & Imp. Co.,.....	2,520.00
" " " Chas. Sculthorp.....	4.04
Aug. 31, " Ocean Beach Association.....	330.37
Jan. 21, 1906, Louisa D. Cook.....	1,754.05
Oct. 9, 1906, Point Breeze Ferry & Imp. Co.....	630.00
And we received from your department on back collections.....	$10,911.68

Q. Since when? A. Since January, 1904.

BY SENATOR MINTURN.

Q. Does your statement show where the lands are upon which these rentals are due? A. No, sir; that can be obtained from the leases themselves.

Q. You have no record of that in your office? A. Oh, yes; in our books.

Q. Your books show that? A. Yes, sir.

Q. Do you know whether any of these lands are on the Hudson river? A. Quite a number.

Q. I would like to ask you, if you will at the next hearing furnish us with a list of the lands which are in arrears on the Hudson river and the Kill von Kull? A. All right, sir.

MR. McCARTER.—I have here a schedule of the leases that Mr. Hutchinson has prepared, giving the date and the name of the lessee and the amount due. We might, perhaps, unless it is going to be too much trouble, write the location of the property below it, and then we will put the whole thing in.

HORACE G. GITHENS sworn. Examined by Mr. McCarter.

Q. Are you a clerk in the Treasurer's office? A. I am, sir.

Q. At my request have you made a table of some figures in connection with the riparian properties of the State? A. Yes, sir.

Q. Have you got the table here? A. I have.

Q. Please read what it says.

A. Amount received from riparian grants from April 11, 1864, to August 31, 1906, $2,509,267.40.

There may be a few omissions there, owing to the complicated manner in which the books were kept back in the seventies.

Q. Unless there are some errors, that is correct? A. Yes, sir.

Riparian leases converted into grants.....	$1,434,545.90
That added together, grants and leases.....	3,943,813.30
Rents received from riparian leases to August 31, 1906	1,915,439.24
Sum total received from riparian leases and grants and rent.....	5,859,252.54

JOHN L. SWAYZE sworn. Examined by Mr. McCarter.

Q. You are a member of the bar and were formerly the Assistant Attorney-General? A. Yes, sir.

Q. Previous to that time you were secretary to Governor Murphy? A. Yes, sir.

Q. Will you please state anything that you can recall that you did while connected with the Attorney-General's office with reference to arrearages of rent due the State from riparian leases, in your own way? A. The bill creating the Assistant Attorney-General's office, and fixing its duties, was passed sometime in March, 1904. I was appointed the Assistant Attorney-General under that bill, and took office the first day of April, 1904. I think it will be necessary to premise somewhat in order to make it clear. The duties of the office were entirely new; we had charge of the legal work for the different departments of the State government. Formerly that work had been done by lawyers selected by the state departments. It was necessary to organize that branch of the Attorney-General's office. That was my special duty. I took it up immediately after my appointment, on the first of April, got my force of help together, and started in to find out what the work would be, what it would be necessary to do, etc.

We had charge of a large number of matters, most of them in an advisory capacity, and in some cases we had charge of litigation, as, for instance, the Fish and Game Commission, the Board of Health, and the factory and workshop department. Among the things I took up early, my attention being called to it by Mr. Hutchinson, was the back rentals on the riparian leases. I asked him to prepare a list of the leases that were in arrears, giving me sufficient data so I could take steps to collect the rentals. He did so, and turned over to me between the first of May and the middle or last of June, some 60 leases, involving from a very few hundred dollars, up to several thousand dollars. I took up that list and immediately commenced to do what I could to collect the rentals. I found that Attorney-Generals Stockton and Grey had held there was no way in which we could legally enforce the payment of the moneys due as back rentals, but I expected to be Assistant Attor-

ney-General for five years anyway, and I started to make a study of the riparian business in connection with the other duties of my office. I wrote to all of the delinquents at the addresses as given to me—I didn't get the addresses of all, it was impossible to obtain them. I called their attention to the fact that they were in arrears and that they owed the State the arrearages of rent and interest at 7%, under the law. The results in the beginning were not very encouraging. Some would write a long excuse about the land not materializing in value, and others would give other reasons ; none of them wanted to pay. I believe in the first six months I collected some ten or eleven thousand dollars ; I would not say how much. I think the statement was made by Mr. Hutchinson, that between ten and eleven thousand dollars was collected, and probably that is correct.

I found then that not only was it difficult to force the collection under the law of the amount due as back rental, but in many cases the land had disappeared, had washed away. In other cases, people had died. I remember one case of a grant at Camden, where a man entered into a trustee agreement in which his wife joined, and they put all their property, which included a riparian grant, in the hands of a Philadelphia trust company, the survivor to take. When the time arrived for the survivor to take, the survivor was in an insane asylum. They were Norwegians by extraction and their relatives were scattered all over the United States, and the trust company had tried to find them and failed.

In another grant on the Hudson river, known as the Gorham and Dickerman grant, the people had disappeared. Although I detailed one of the men of our office to look into it and do all he could, he was unable to find them. That involved a very valuable piece of land.

I found that some of the lands where the leases had been in arrears for a long time, had afterwards been granted by subsequent Riparian Boards to other parties, and that made another complication which was not very easy to meet.

You, gentlemen on the Committee who are lawyers, know what it is to try and find the legal representatives and heirs of people who have disappeared fifteen or twenty years ago, and know that this must have taken a long period of time. We corresponded and did everything we could.

I found it would be advisable to have a law passed by the Legislature to simplify the method of collecting these rentals, or to permit the taking the land back into the possession of the State. So I drew a bill on those lines, and it was presented to the Legislature

of 1905, but it failed of passage. I don't know why. It was introduced in the middle of the session, I didn't push it, I felt I had done my duty. I consulted with Governor Stokes and with my chief, Mr. McCarter, and had their assistance and advice in the whole matter. It may be of interest, owing to the question asked by Senator Minturn, this list which I have here is a list of the leases which were turned over to me, and identifies in a general way where the lands are situated, and when the lessees commenced to default in their rental. One of the things which struck me with considerable force was this : that the State having made a grant or lease on the rental plan, the lessor pays 7%. He pays when he gets his grant and stops paying right there in a great many cases, and you will find in this record quite a number of cases where they paid to get the grant and never paid any rentals afterwards. If you are interested in where these lands are situated, I will pick out some cases.

BY SENATOR MINTURN.

Q. Were those leases converted into grants? A. No ; they were leases subject to be converted into grants at any time, and one of the things I wanted to work forward to, for the benefit of the State and the simplification of the whole process, was to prevent the granting of leases, which would leave the right in the holder of the lease to take it or refuse it at any time that he saw fit, leaving no obligation on him, but taking out of the control of the State this valuable property, and if a subsequent offer was made the State could not accept it, could not do anything, but the person holding the lease could take it or refuse it.

Q. No moving consideration passing ? A. No; except the obligations under the grant which was fixed at the time, upon which the rental was calculated.

Q. Although the land might have increased in value? A. It might have multiplied a hundredfold, it would make no difference in the price, and the loss in interest to the State has been very large.

BY MR. McCARTER.

Q. I would suggest that you hand that to the stenographer to be incorporated in the minutes, but you might select a few and put the Committee in possession of the general points about them. A. I suppose you mean to select some typical cases ?

Q. Yes. A. Here is the Long Branch Pier Company, under date of May 10, 1879, amount involved, $598 ; interest is due from November 10, 1892, at 7%. They paid for 14 years. The land is fronting on the Atlantic Ocean at Long Branch. The address is the Long Branch Pier Company, 16 Produce Exchange, New York, and the

amount due at simple interest to November 10, 1903, is $418.60. The treasurer's records show that the last payment was made by J. V. Jordan, receiver, covering one year's rent. Company out of existence. Certificate of dissolution filed in 1902.

That is one of the cases, I suppose, where there should be a method for the State to go and take the land.

BY SENATOR MINTURN.

Q. What is the condition of that grant? A. Just as I stated; there has been no change unless there has been some change since I left. I don't suppose the receiver ever did anything with it.

Q. Were the State taxes paid by the corporation? A. They had dissolved.

Here is another: Edgar Y. Youmans, dated January 30, 1896, amount $725. Interest due from July 30, 1896, at 7%. The land is located on the Hudson river, township of Hackensack, Bergen County, N. J. The first instalment of interest was in 1896, six months after the grant was made, and no interest has been paid since.

Charles B. Gunther, land in New York bay at Bayonne; principal, $5,000, interest due from September 10, 1902, at 7%; grant made March 10, 1877. I had a long correspondence with Mr. Gunther, and he claimed that the family were too poor to pay it, and there was no way of raising the money. The total amount was $250.

Q. Was that interest considered as rental? A. That is rental; I speak of it as interest; I mean rental.

Q. Is there no legislation now under which these leases can be forfeited? A. I will take that up in a minute. Here is a small grant: to Angeline Thompson, dated April 28, 1874, amount $750; rentals due from October 28, 1884. The land is located on the Delaware river at Duck Island, near Bordentown. The party is dead and her heirs live in California. The memorandum at the bottom is, "Cancel lease."

The land down in the Delaware river, around Bordentown, consists of islands that were taken up at one time or other, and in many instances had a memorandum attached, "Land washed away," and on investigation I found that the land had disappeared; yet it was still carried up on the books of the treasurer's office.

Here is a class of leases—the Palisade Improvement Company took by assignment the rights of William Phelps and others in Englewood township, and since that time they have refused to pay any rentals, for the reason they claim that they are part of State government and are not chargeable with rental. That was in pro-

cess of negotiation between us at the time I left the Attorney-General's office on April 1st, 1905.

There is quite a lot of that land that is in that state.

Q. That is, part of the Palisade Park Improvement Company? A. Yes; that is my understanding of their position; it involves quite a lot of land.

Here is the Gorham and Dickerman lease, dated April 18, 1874, amount $7,825. No rentals ever paid. The land is on the Hudson river in the townships of Palisade and Harrison, Bergen county. Last address, George R. Dutton, 167 Broadway, New York. Amount due, at simple interest to August 12, 1903, $16,432.50.

I sent a man from the office up into that territory to see whether some information could be obtained. I applied to Mr. Payne, the secretary of the Board, and could not find out anything about it. I hadn't given it up at the time I resigned.

Here are the Annett grants, with a memorandum, "No rentals ever paid." One with the principal of $7,860, under date of April 18, 1874, for land on the Hudson river, in the township of Ridgefield, Bergen county. Another one is dated April 18, 1874; amount $10,825; no rentals ever paid. The land, two tracts, on the Hudson river, Ridgefield township, Bergen county.

That is a fair sample of what they were. They were scattered all over the State. In order to overcome the difficulties which I had in collecting the rentals, I prepared the bill which provided that the State should, under certain proceedings, have the right to demand the rentals, and on failure of the lessees to pay, then the State could enter on the lands and take the lands, or proceed at law and take the lands, and proceed to collect the back rental. I believe those were the provisions of the bill. That failed of passage in 1905, and I believe was taken up by the Attorney-General, and was passed at the last session, and is now a law. In pursuance of my work I drew that bill, and I want to say that all through this work I was in consultation with the members of the Riparian Board, the secretary of the Board, the Attorney-General and Governor Murphy, and then with Governor Stokes.

I also drew a bill providing that the Riparian Board should lease the lands for a period of years, I think twenty, and providing for a renewal of the lease upon a re-fixing of the valuation at a certain percentage. That was introduced, and also failed of passage. Whether anything was done with it at the last session, I don't know. That only covered the general principle and brought up for discussion whether the land should be leased or not.

BY MR. McCARTER.

Q. Did you attend the meetings of the Riparian Commission while you were Assistant Attorney-General? A. After I had become more or less acquainted with the work, I found that the work was pretty intricate, and in order to do the work properly, I had to become better versed in it; so I told the Board if it desired it, I would attend their meetings and I attended and gave them advice in case of an emergency, and went over matters with them. I only attended the meetings as counsel for the purpose of advising them as to the law on any question, and I made a practice of leaving the room when they passed on what they should charge for a grant; but, of course, necessarily, I took lunch with the gentlemen, met them, and was present and heard them discuss prices, and became more or less conversant with the work of the Board.

Q. Do you remember an application by the American Coal Company for a deed, they claiming under a legislative grant? A. The American Coal Company operated, I think, under the Associates of New Jersey grant, a legislative grant made back in 1804. They used it for a coal dock, and they applied, through their attorney, to have a confirmatory grant, or a deed which could be put on record, and wanted to pay $50 for it.

Q. Fifty dollars per foot? A. Yes, sir; per foot front. The Board called my attention to the application at a meeting in Jersey City, and said as that came under the general scope of the litigation in the Guffy Petroleum Company case, they would refer it to me. I took it up and became convinced that the minimum charge for a deed of this kind had been fixed at $50 per foot.

Q. Did you hear anybody suggest that the statute requiring $50 per foot had been repealed? A. I never did. I understood they were working under it, and I gave an opinion under it. The lawyer representing the American Coal Company came to me, and first tried to show that he ought to have the grant for nothing. I refused to accede to any such proposition. He said, "Then I will give $50 per foot." I said "No, if you had offered $50 per foot at the time when this statute was passed, that would have been a fair proposition, but you have been in possession of this property many years, and what you ought to pay is $50 per foot, plus interest from the time the statute was passed," which ran it up to $100 or $200 per foot. He refused to accede to that. We fought back and forth and I claimed that they had no right to occupy it for the purpose for which they were using it; that the Riparian Board had a right to bring an action against them and force them to take out a new grant or give up the land entirely, and if the Board asked my ad-

vice, I said I would advise them $500 per foot—some such sum. I know I had very high ideas of the value of that land. I believe up to the time that I left the company refused to take any grant at all, and the matter was left in abeyance ; I don't know what became of it.

That brings up also, the matter of the litigation with the Guffy Petroleum Company. The Guffy Petroleum Company had through successive titles, obtained the rights under the Ingham and Jenkins grant, a legislative grant passed in 1849, and the uses to which the lands were to be put were for certain purposes stated in the act and that use was different from the use which the Guffy Petroleum Company was making of the lands. The gentleman who preceded me as counsel for the Riparian Board had brought suit against the Guffy Petroleum Company, which was pending when I went into the Attorney-General's office, and it came to me in due course, to assist the Attorney-General in carrying on that litigation. That brought up the question of the right of the State to enforce upon the grantee the strict terms of the act fixing the use for which the lands were granted and to prevent the grantee from using them for purposes other than that fixed in the legislative grant. We won that case, and obtained a settlement which we felt in the office settled the whole question. I called the attention of the Riparian Board to the result, and they instructed me to look into the question of how much of the State's land was held under legislative grant, and used for purposes foreign to that fixed by the act.

This happened in the winter of 1905, just as I left the Attorney-General's office, in the early spring. It was in course of investigation at the time, and I represented the Attorney-General's office.

Q. That is all.

The following is a list of leases on which the rentals are in arrears, which list is referred to in the testimony of Mr. Swayze :

Helen T. Denning. Dated May 28, 1896 ; amount, $16.70.
Interest due from Nov. 28, 1897, at 7%.
Lands, Rancocas River at Delanco, Burlington Co.
Address, Delanco, N. J. Amount due $78.74.

Mungo J. Currie and James Currie, Exrs. of Wm. Currie, dec'd ; amount $935.
Interest due from May 12, 1898, at 7%.
Land, Newark Bay, at Bayonne.
Address, M. J. Currie, Commercial Trust Bldg., Jersey City, N. J.

Long Branch Pier Co. Dated May 10, 1879; amount, $598.
Interest due from Nov. 10, 1893, at 7%.
Land fronting Atlantic Ocean, Long Branch.
Address, Long Branch Ocean Pier Co., 16 Produce Exchange, New York.
Amount due at simple interest, to Nov. 10, 1903, $418.60.

Folio 87.

Treasurer's records show last payment made by J. V. Jordan, Receiver, covered one year's rent. Company out of existence. Certificate of dissolution filed in 1902.

Louisa D. Cook. Dated Aug. 1, 1889; amount, $2,296.30.
Interest due from Feb. 1, 1895, at 7%.
Land fronting on Newark Bay at Bayonne.
Address, Louisa D. Cook, Bayonne, N. J., or M. R. Cook, 144 to 150 Franklin St., N. Y.
Amount due, at simple interest, to Feb. 1, 1904, $1,446.66.

Folio 319.

First letter sent May 27.
Second letter sent June 17, giving until July 15 to settle.
Book 9, p. 114.
Third letter sent Jan. 9, 1905, extending time for settlement to Feb. 1.
Time extended to early in April. Wrote James Benny, May 15, '05, giving amount due May 23, '05.
Wrote James Benny, Dec. 8, giving amount due to Dec. 31.

James Day. Dated Dec. 15, 1892; amount $200.
Interest from June 15, 1894, at 7%. Land, westerly shore, Bellman's Creek, Ridgefield Township, Bergen Co.
Last known address, James Day, 318 Broadway, New York City.
Amount due, at simple interest to June 15, 1904, $140.

Folio 347.

First letter of notification, May 27, '04.

Edgar Y. Youmans. Dated Jan. 30, 1896; amount $725.
Interest due from July 30, 1896, at 7%. Land, Hudson river, Township of Hackensack, Bergen County, New Jersey.
Address, Edgar Y. Youmans, Canal Street and North River, New York City.
Amount due, at simple interest, to July 30, 1903, $355.25.

Folio 395.

Point Breeze Ferry & Improvement Co., dated Sept. 20, 1879.
Amount, $18,000. Interest due from March 20, 1902, at 7%.
Lands fronting New York Bay, at Jersey City.
Address, Point Breeze Ferry & Improvement Co., No. 1 Montgomery St., Jersey City, N. J., care of Mungo J. Currie.
Amount due at simple interest to March 20, 1904, $2,520.

Folio 36.

June 1, letter from Currie promises to pay in about a week.
Lease returned to treasurer's office, June 6, 1904, together with check for $2,520, amount of rentals due to March 20, 1904. Treasurer's receipt on file.

Joseph L. Munn. Dated June 27, 1901; amount, $2,300.
Interest due from Dec. 27, 1902, at 7%.
Address, Joseph L. Munn, 800 Broad St., Newark.
Amount due, at simple interest, to Dec. 27, 1903, $161.

Folio 26.

Charles B. Gunther et al. Dated March 10, 1877.
Amount $5,000. Interest due from Sept. 10, 1902, at 7%.
Land, New York bay at Bayonne.
Address, C. B. Gunther, care of Mungo J. Currie, Commercial Trust Building, Jersey City, N. J.
Amount due, at simple interest, to Sept 10, 1903, $350.

Folio 9.

(See Hutchinson before entering suit.)
May 27, notification sent.
June 3, answer stating taxes and rentals were so much that it was impossible to pay.
June 17, notified rent must be paid or suit would be brought.
Book 9, p. 117.

Redmond D. Donnell. Dated Sept. 16, 1897; amount $5,875.
Interest due from Sept. 16, 1898, at 7%.
Land fronting on Kill von Kull, at Bayonne.
Address, Redmond D. Donnell, 104 Avenue C, Bayonne.
Amount due, at simple interest, to Sept. 16, 1903, $2,056.25.

Folio 420.

May 27, notification sent.
June 17, notified if not paid by July 15, suit would be commenced.
Book 9, p. 116.

DeWitt Van Buskirk, et al. Dated Dec. 17, 1889.
Amount, $3,142.50. Interest due from June 17, 1893, at 7%.
Land fronting on New York bay at Bayonne, N. J.
Address, DeWitt Van Buskirk, Commercial Trust Building, Jersey City.

Amount due June 17, 1903, at simple interest, $2,199.75
" " " " 1904, " " 2,419.72

Folio 327.
See No. 1

Back rentals to Dec. 17, 1904, paid by check of Elizabeth Bacot.
Check and lease returned to treasurer's office, Jan. 31, 1904.

Joseph L. Van Sant et al. Dated May 29, 1874 ; amount, $100.
Rentals due from Nov. 29, 1894, at 7%.
Land, Delaware river, near Bordentown.
Party dead and lease should be cancelled.
Duck Island, no value to grant.

Out.

Joseph L. Van Sant et al. Dated April 28, 1874 ; amount, $928.50.
Rentals due from Oct. 28, 1894, 7%
Land, Delaware river, near Bordentown, N. J.
Party dead. Lease should be cancelled.
Same as No. 12.

Folio 301.
Out.

Joseph L. Van Sant et al. Dated April 28, 1874 ; amount, $1,800.
Rentals due from Oct. 28, 1894, 7%.
Land, Delaware river, Biddle's Island, below Bordentown.
Party dead. Lease should be cancelled.

Folio 199.
Out.

Tubular Transit Co. Dated Dec. 27, 1875 ; amount, $500.
Rentals due from Dec. 27, 1877.
Land, Arthur Kill, or Staten Island Sound, Union Co.
No address.
Note, Lease Book : "Have no title to property—Attorney General, 1882."

Folio 191.

Angeline Thompson. Dated April 28, 1874 ; amount, $750.
Rentals due from Oct. 28, 1884, 7%.
Land, Delaware River, Duck Island, near Bordentown.
Party dead and her heirs live in California. Cancel lease.

Folio 189.

Out.

Maria Staken. Dated April 2, 1881; amount $812.50.
No rentals paid.
Land, Atlantic ocean & Shrewsbury river, Ocean Township, Monmouth Co.
No address.

Folio 183.

Sea Grove Association. Dated April 12, 1879 ; amount, $1,450.
Rentals due from Dec. 30, 1896, 7%.
Land, Cape May Point.
Address, Catherine Hurd, Cape May. Letter returned undelivered.
Amount due at simple interest to Dec. 30, 1903, $710.50.

Folio 171.

Clement B. Reeves. Dated March 16, 1878 ; amount, $237.60.
Rentals due from Sept. 16, 1901, 7%.
Land, Delaware bay, Lower Township, Cape May Co.
Last address, J. Henry Edmunds, Secy., Cape May, N. J.
Amount due at simple interest to Sept. 16, 1903, $33.26.

Folio 163.

May 27, first letter.

Book 9, p. 122.

June 17, second letter stirring him up.
Ret'd to treasurer's office.

Charles Reeder. Dated May 29, 1874 ; amount $750.
Rentals due from May 29, 1894, 7%.
Land, Delaware river, Duck Island.
Mr. Reeder is dead, the land washed away, and lease should be cancelled. (Hutchinson.)

Folio 161.

William Walter Phelps and George S. Coe. Dated April 18, 1874.
Amount, $2,060 ; rentals due from April 18, 1901, 7%.
Land, Hudson river, Englewood Township, Bergen County.

Thomas R. White, Jr., Executor of Phelps, 100 Broadway, New York, says lease has been assigned to the Palisade Improvement Co., 31 Nassau street, New York.

Amount due to April 18, 1904, at simple interest, $432.60.

Folio 143.

Henry Oigg and wife. Dated Aug. 1, 1879; amount $925.

Rentals due from Aug. 1, 1881, 7%.

Land, Rancocas river, Willingboro Township, Burlington County.

No address.

Note in lease book—"Atty.-General—82."

Amount due, at simple interest, to Aug. 1, 1903, $1,489.25.

Folio 131.

Ocean Beach Association, dated July 1, 1881; amount $2,359.81.

Rentals due from April 14, 1902, 7%.

Land, Atlantic ocean and Shark river, Ocean Beach (Belmar).

Address, S. L. Gillen, Treas., Belmar, N. J.

Amount due to April 14, 1904, at simple interest, $330.37.

Folio 127.

Action deferred until July 1st.

Richard Lloyd, dated Jan. 8, 1876; amount $330.

Rentals due from July 8, 1880, 7%.

Land, Delaware river at Beverly City, Burlington Co.

Last known address, Clement E. Lloyd, 408 Hale Building, Philadelphia.

Note in lease book—"Attorney-General, Oct. 31, 1881."

Amount due to July 8, 1903, $531.30, at simple interest.

Folio 89.

Adele H. Legier, dated Jan. 27, 1877; amount $339.

Rentals due from July 27, 1895, 7%.

Lands, Navesink river, at Oceanic, N. J.

Address, Alfred DeGarvis, Bellevue House, Oceanic, N. J.

Amount due at simple interest to July 27, 1903, $189.84.

Folio 85.

May 27, notified.

June 17, stirred up, given to July 15.

(See No. 44) Book 9, 123.

Gorham & Dickerman. Dated April 18, 1874; amount, $7,825.
No rentals ever paid.
Land, Hudson River, Township of Palisade and Harrington, Bergen Co.
Last address, Geo. R. Dutton, 167 Broadway, N. Y.

Folio 61.

Amount due, at simple interest to Aug. 12, 1903, $16,432.50.

William B. Dana. Dated Dec. 18, 1876; amount, $640.
Rentals due from Aug. 12, 1901, 7%.
Land, Hudson river, Englewood township, Bergen Co.
Dana's address, 97 William street, New York, P. O. Box 958.
Claims to have assigned lease to Interstate Park Commission, 31 Nassau street, New York.
Amount due, at simple interest, $89.60, to Aug. 12, 1903.

George S. Coe. Dated April 17, 1874; amount, $1,076.67.
Rentals due from April 18, 1901, at 7%.
Land, Hudson river, Englewood Township, Bergen County.
Address, George S. Coe, Englewood, N. J.

Folio 31.

Catherine Barrett. Dated January 18, 1876; amount $425.
No rentals ever paid.
Land, Rancocas river, Cinnaminson township, Burlington county; on river between Delanco and Centreton. Note in lease book—"Property sold by sheriff to George B. Robeson," address, Bridgeboro, N. J.
As to present owner write Hon. H. D. Shedaker, Edgewater Park, N. J.

Folio 9.

Property upland was conveyed to Charles G. Robeson by Henry Walter in Feb. 1903. Charles G. Robeson died during February and devised property to F. B. Lambert or Emma A. Lambert, Riverside, N. J.
Write to F. B. Lambert, Riverside, N. J.

James Annett et al. Dated April 18, 1874; amount, $7,860.
No rentals ever paid.
Land, Hudson river, Township Ridgefield, Bergen County.
Last known address, Washington Hawes, Executor, Port Richmond, Staten Island, N. Y.

Folio 5.

James Annett et al. Dated April 18, 1874; amount, $10,825.
No rentals ever paid.
Land (two tracts) Hudson river, Ridgefield Township, Bergen County.
Last known address: Washington Hawes, Executor, Port Richmond, Staten Island, N. Y.
Folio 7.

Nathaniel Hare. Dated Aug. 20, 1875; amount, $664.50.
Rentals due from Aug. 20, 1880, 7%.
Land, Newark bay at Bayonne.
Last known address, 190 Chambers St., N. Y.
Note in lease book "Attorney-General, Oct. 21, 1882."
Folio 69.

Received June 6, 1904, from Frank O. Briggs, State Treasurer, the following riparian leases for collection:

Charles H. Ward, Trustee. Dated Dec. 18, 1876; amount, $575.
Rentals due from Oct. 1, 1878.
Land, Navesink river at Oceanic, N. J.
See letters with lease.
Last address, 165 and 167 Broadway, New York.
Amount due at 7% to Oct. 1, 1904, $1,046.50.
Folio 205.

Jane G. Wildin. Dated April 12, 1879; amount, $500.
Rentals due from April 12, 1883.
Land, fronting Atlantic ocean, Cape May Point.
Last address, Alexander Wildin, Phila., Pa., or A. H. Hamilton, 226 W. Washington Sq., Phila.
Amount due to April 12, 1904, $735.
Folio 215.

Joseph B. and William S. Yard. Dated April 30, 1881; amount $114.
Rentals due from Oct. 30, 1902.
Land fronting Shark river near Ocean Beach (Belmar).
Address, Benjamin P. Morris, Long Branch, N. J.
Amount due to October 30, 1903, $7.98.
Folio 46.

Rebecca A. Simpson. Dated Feb. 3, 1883; amount $1,822.50.
Rentals due from Aug. 3, 1888.
Land fronting Atlantic ocean and Hereford Inlet, Cape May County.
Last address, Rebecca A. Simspon, 1829 Arch St., Phila.
Amount due to Aug. 3, 1904, $1,913.63.
Folio 225.

Margaret Ann Dunn. Dated Oct. 28, 1882; amount $43.50.
Rentals due from April 28, 1900.
Land, Raritan or Sandy Hook bay near Brevent Park, Monmouth County.
Address, Lester Moore, Atlantic Highlands, N. J.
Amount due to April 28, 1904, $12.18.
Folio 231.
Paid by Waldron Moore, Atlantic Highlands, N. J., July 16, 1904, $12.18.
Lease returned to State Treasurer.

George S. Adams. Dated July 21, 1883; amount $350.92.
Rentals due from July 21, 1885.
Land fronting Atlantic ocean, Barnegat bay and Sevan pond.
Last address, 17 and 19 North Water St., Phila., Pa.
Amount due to July 21, 1903. $442.16.
Folio 235.

Charles Barton. Dated June 9, 1883. Present amount lease $58.52.
Rentals due from April 3, 1902.
Land, Egg Harbor Township, Atlantic Co.
Address, A. H. Phillips, 158 South Penna. Ave., Atlantic City.
Amount due to April 3, 1904, $8.19.
February 23, sent lease to Payne.
Back rental paid and lease converted into a grant, March 15, 1905.
Folio 52.

Murrell Dobbins. Dated Oct. 13, 1883; amount $776.50.
Rentals due from Oct. 13, 1895.
Land on Delaware river, near Florence, N. J.
Address, Samuel Robbins, Esq., his attorney, Masonic Temple, Camden, N. J.
Amount due to Oct. 13, 1903, $434.84.
Folio 241.

The New Brunswick Land Co. Dated May 28, 1884, $1,800.
Rentals due from May 17, 1885.
Land, Atlantic ocean, Barnegat bay, at Ortley.
Last known address, N. B. Land Co., Ortley or New Brunswick.
Amount due to May 17, 1904, $2,394.
Folio 249.

The Holly Beach City Improvement Company. Dated October 4, 1884; amount $1,175.
Rentals due from April 4, 1888.
Land at Five Mile Beach, Townships of Middle and Lower Cape May Co.
Address, 322 Market St., Camden, N. J.
Amount due to April 4, 1904, $1,316.
Folio 261.

John Gayner. Dated Aug. 15, 1885; amount $314.39.
Rentals due from Feb. 15, 1896.
Lands, Salem Creek, Salem Co.
Address, John Gayner, Salem, N. J.
Amount due to Feb. 15, 1904, $176.06.
Folio 267.

Adele H. Ligier. Dated June 24, 1886; amount $123.14.
Rentals due from June 26, 1897.
Lands fronting southerly shore of Navesink at Oceanic.
Address, A. DeGarvis, Oceanic, N. J.
Amount due to June 26, 1904, $60.34.
Folio 273.

Roderick A. Clark et al. Dated June 26, 1886; amount $214.
Rentals due from June 26, 1896.
Lands, Township of Brick, Ocean Co., Manasquan River.
Address, Martha A. Pearce, Pt. Pleasant, N. Y.
Amount due to June 26, 1904, $119.84.
Lands re-conveyed to State.
Folio 275.

The Westerays Point Land & Impt. Co. Dated Jan. 3, 1889.
Present amount, $2,398.25.
Rentals due from Jan. 30, 1896.
Lands, Westerays Point, Barnegat Bay, Ocean Co.

Address, A. Bell Malcomson, Treasurer, 132 Nassau street, New York.
Amount due to Jan. 30, 1904, $1,343.02.
Folio 289.

John G. Hippenstiel. Dated Dec. 6, 1888; amount, $99.20.
Rentals due from June 6, 1898.
Lands, Rancocas river at Delanco, N. J.
Lease assigned to Chas. F. Van Horn.
Address, Chas. F. Van Horn, 571 Bullitt Building, Phila.
Folio 291.
Amount due to June 6, 1904, $41.66

Chas. Knapp. Dated Dec. 6, 1888; amount, $99.20.
Rentals due from Dec. 6, 1896.
Lands, Rancocas river, Delanco, N. J.
John G. Hippenstiel formerly had charge of this lease. Do not know where he is. Has moved out of New Jersey. Write Chas. F. Van Horn, 571 Bullitt Bldg., Philadelphia, for information.
Folio 297.
Amount due to Dec. 6, '03, $48.61.

David W. Steel. Dated Dec. 6, 1888; amount, $150.83.
Rentals due from Dec. 6, 1893.
Lands, Rancocas river, Delanco, N. J.
Thomas C. Steel, brother of above man, died. Formerly paid on this lease. Write his brother, David W. Steele, Broad and Chestnut streets, Philadelphia, Pa.
Folio 299.
Amount due to Dec. 6, '03, $105.58.

John Deeming. Dated Aug. 29, 1889; amount, $166.66.
Rentals due from Aug. 28, 1896.
Lands, Rancocas river, at Delanco, N. J.
Last address, Delanco.
Folio 307.
Amount due to Aug. 28, '03, $81.66.

Charles Sculthrop, dated Nov. 29, 1889; amount, $57.75.
Rentals due from Nov. 29, 1902. Lands, Pleasure Bay.
Address, F. P. McLain, Pleasure Bay.
Folio 63.
Amount due to Nov. 28, 1903, $4.04.

Check for above amount received June 30, 1904, from Risdon B. Caulk.

Lease returned to Treasurer's office, together with above check July 6, 1904. Treasurer receipt on file.

Edward C. Curtis, dated July 28, 1892; amount, $1,207.50.
Rentals due from July 28, 1895.
Lands, Raritan Bay, Atlantic Highlands.
Address, M. E. Curtis, Atlantic Highlands, N. J.
Folio 341.
Amount due to July 28, 1903, $676.20.

Martha R. Woods, dated July 28, 1892; amount $1,514.96.
Rentals due from July 28, 1896.
Lands, Delaware bay, Downe Township, Cumberland County, N. J.
Address, Frank Woods—Newport, Cumberland County.
Amount due to July 28, 1903, $742.33.
Folio 349.

Edwin Field. Dated Dec. 27, 1894; amount $235.
Rentals due from June 27, 1895.
Lands, on Navesink, at Red Bank.
Address, Red Bank.
Amount due to June 27, 1904, $148.05.
Folio 369.

John A. Treanor. Dated Mar. 28, 1895; amount $3,052.50.
Rentals due from Mar. 28, 1897.
Lands, Hudson river, Harrington township.
Address, James J. and F. P. Treanor, 547 West Forty-fifth St., New York.
On Lease book entry as follows:
"No notice & no Int."
Amount due to Mar. 28, 1904, $1,495.73.
Folio 375.

Charles A. Brown and John Fleming. Dated Aug. 8, 1895.
Amount, $4,074.80.
Rentals due from Aug. 8, 1896.
Note in Lease Book: "No Int. in Chancery." Lease not in office.
Check for rentals, returned them, Feb. 8, 1897.
Folio 379.
Amount due to Aug. 8, 1903.
Not included in receipt. Lease not delivered to Attorney-General.

Nicholas E. West. Dated April 30, 1896; amount, $486.
Rentals due from April 30, 1897.
Lands, Branchport Creek, Ocean Twp., Monmouth Co.
Address, Pleasure Bay, N. J.
Folio 397.
Amount due to Apl. 30, 1904, $238.14.

CHARLES W. FULLER, recalled.
DIRECT EXAMINATION BY MR. McCARTER:

Q. I will ask you if you have had some acquaintance with riparian grants, and have acted as attorney for different persons in making application, and whether you feel that you are familiar with the subject of riparian grants, and the proper policy to be pursued by the State? A. I obtained a great many grants from the Riparian Commission, and I have a very clear idea as to my views as to the proper disposition to be made of riparian lands.

Q. Can you estimate, roughly, how many applications you have succeeded in getting through? A. I could not without looking at my books, I guess twenty-five or thirty.

Q. In any of these cases have you ever given to the then counsel an abstract of title? A. No, sir; I don't think I ever did.

Q. Did you in each case, however, pay a counsel fee for the alleged examination of the alleged abstract of title which you didn't give him? A. I think I did.

Q. What are your views in regard to the subject of the appropriate or proper course to be pursued by the Riparian Commission in disposing of the remaining State lands? A. The only proper course for the Commission to pursue for the benefit of the State and School fund is to sell the lands in fee. No corporation or individual for whom I have ever attended to any business, would take a lease of the lands and improve them. The lands in which I have been more particularly interested are those on Constable Hook in the City of Bayonne, on the shores of the Kill von Kull and Newark bay. The modus operandi of the Riparian Commission for years seems to have been to get the highest price possible that it could for a piece of property, and that when the next purchaser came in that vicinity, to make the price still higher. There was a scheme on foot, of which Mr. Swayze has spoken, to obtain a lease with the right to convert it into a grant by paying six months' rent down, and if the owner could sell his property he would sell it, and, if not, he would take no further interest and the lease would lapse. This was done by the small owners, and I may say here that most of the owners of these lands were never in a position to take a grant for

the riparian rights. At one time when the sales were few of riparian rights, and the receipts small, the Commission started on the Kill von Kull and put a price of $50 a foot upon the lands under water, and some poor fellows who had restaurants along the shore and who had put out floats for the landing of their small boats, were compelled to take leases based upon the price of $50 per foot. Most of them lapsed, and some of these people have had mortgages on their property foreclosed and sold out; but that price of $50 per foot was put on the property from what is now known as the Guffey plant, formerly the property of Gunther, down to Newark Bay, and that property—because of this high price—has been a drug in the market ever since. It could not be sold for any purpose. The price was prohibitory, and nobody touched it. Then the Babcock and Wilcox company came in, and an attempt was made to have the price reduced. I appeared for Babcock and Wilcox. Governor Voorhees had an idea that the the State rights should be leased and the rental should be fixed at the end of that lease proportionately to the value of the property. Babcock and Wilcox would not look at a lease. At the time of this application the property had not been sold. The sale was conditional upon the purchase of these riparian rights. I had the matter before the Commission and Governor Voorhees, and it so happened that the land under water owned by the State was a very few feet from the line of the ripa, the channel running very close to the shore at this point. I knew of this because I owned a house on a portion of it, and I had in mind that one morning a sloop came in very near my sea wall, and, in jibing, the boom caught a tree in front of my place and turned it over. So that there was sufficient water for all purposes to within a very few feet of the stone wall which marks the line of the property of the owners, and nothing was required from the State but about 100 feet to build a dock. After long negotiations, the price was practically fixed and I was released from activity in the matter, and Lindabury, Depue & Faulks took the matter up and I think they purchased it for $20 per foot.

That made a break in the price and immediately all the property owners along the Kill, who had held their property for years, thought they saw a chance to sell it. The adjoining property owned by the estate of Rufus Story, purchased these riparian rights for $35 per foot, and a piece of property near the Port Richmond Ferry was sold to the Consumers' Coal and Ice Company, the owner of the ripa, at $30 per foot. On this place they had to do a great deal of filling in in order to get out to the channel. They could not dig be-

cause it was a very hard bottom and there were a great many very large boulders there. Then a party came in who wanted to buy, and his application was pending before the Riparian Commission until recently, when it was withdrawn because of the high price put upon it. This party wanted a thousand feet of the water front. He had purchased on both sides of the tract sold to the Consumer's Coal and Ice Company. His intenion was to put up a very large hardware manufactory there, and he based his purchase of the land upon the fact that the adjoining land had been sold for $30 a foot, and he assumed that to be about the price. When he made his application to the Board of Riparian Commissioners, he was astonished to find that the Riparian Commission had put the price at $60 per foot for the property in this location.

Now, nobody that I have ever had anything to do with would take any of this property unless they could buy the fee, and especially on the Kill von Kull, because there we are competing with Staten Island ; the narrowest point in the channel is only about 900 feet, perhaps 1,000 feet ; but it is very narrow. Staten Island offers them a great many more inducements than we do, and the only advantage we have over Staten Island in this matter, after they get there, is, that we can give them a little better railroad communication than they can on Staten Island. It is easier to build a switch from the Central Railroad than it is for them to get a switch from the Rapid Transit Branch of the B. & O. And I regard putting these prices on the lands of the Kill von Kull and Newark bay as being prohibitive of any improvement.

I had the pleasure of going with the Committee the other day, and I pointed out to them the place at the entrance of the Kill von Kull, nearly opposite New Brighton, where there is a beacon known as the stone beacon, and that is inside of the dock of the Orford Copper Company. To get into the pier of that company, and to the other pier, the people were compelled to dredge a channel through the solid rock, and they get in by turning squarely around in the middle of the stream. They have got to go over to the Staten Island shore and then go straight in, and a little deviation will compel them to back out and try it again. One pier at Constable Hook, not a very long pier, in order to use that they had to spend $60,000 in dredging out the rock. I instance this to show the utter impossibility of a private person or corporation taking a lease of these water rights and using them to the advantage of the State and the community.

If the State gets a fair price for its land under water, why it invests that and gets an income, and the municipality gets the taxes

that these improvements bring to them. For instance, in Bayonne, the taxable value of the plants at Constable Hook are seven or eight millions of dollars. One corporation pays $135,000 taxes a year. That is the way the State gets the benefit for the sale of its riparian rights; but this plan of leasing or the State improving and then leasing, would certainly throw into the hands of our competitors across the Kill von Kull, a large amount of the buildings and a large amount of the new manufactures.

BY SENATOR MINTURN:

Q. Is not the Staten Island shore opposite Bayonne pretty well occupied now? A. No, sir; there is a plaster mill at New Brighton, and an electric light plant there for the electric light and trolley service; then there is a large stretch of land that is held by the Sailors' Snug Harbor, that can never be used for manufacturing purposes; beyond that is the Starin shipyard, and another shipyard, and from there down to the Marine Harbor there are developments, and down there is the Linseed Oil manufactory and a flour mill. That land is not all taken up, and they get it for almost nothing. Their method was to allow him to improve it just as much as he pleased, as long as he didn't interfere with navigation.

Q. Is there a great depth of water on that side? A. Yes; the greater depth of water is on the Staten Island shore. The north side of the Kill von Kull between the Guffey plant and the stone beacon was entirely swamp land. Constable Hook was, in the prehistoric days, an island, and all this meadow land around it was the result of the silt brought down and deposited there.

BY MR. McCARTER.

Q. You don't take much stock in this idea of leasing? A. No, sir; it would be absolutely fatal. I have now this application for this company who are about to erect on the Kill von Kull an immense hardware factory. They bought twenty-five acres and they paid a large amount of money. They will require for their business 1,000 feet of water front, that is in front of their property. They have made application for it, supposing that the price had been fixed by this sale a year or two ago. They went on with their improvements, moved off some of the buildings and commenced to grade, and even made the mistake of driving some piling on the land of the State, supposing, of course, that the State was not in the jacking-up business, and when we found that out we stopped the pile driving, and it may be that we will be obliged to remove them. If that price were to be insisted upon, I think the concern would simply abandon the site, because $60 a foot makes a tremendous amount of money on a thousand feet of water front, and

a good many questions would come up. There was a ferry grant there during the time of George III, in 1700, giving the parties a mile and a half of water front, and there were some freeholder licenses there, and there is a dock there that used to be part of the road from New York to Philadelphia. There are a good many questions that come in, but we want to buy the water front and improve the property.

BY SENATOR MINTURN.

Q. Don't you think the failure or refusal of the people who want the land on our shores to take a lease, is due to the fact that they know under the present system they can get a grant? A. No; I would not advise it as a business proposition, and I have sometimes to advise on business matters, but I would not advise any man or any corporation to put any money on water front property on a lease with the State or anybody else, especially with the State. No one knows better than the Senator, that dealing with municipal corporations, or cities dealing through their common councils, or with the State through the Legislature, is most unsatisfactory. You never know from one time to the other what the Legislature or subsequent Legislatures will do. "Acts of Parliament are not binding upon succeeding Parliaments," and we are up to that.

Q. Assuming that you had a competent Board of Riparian Commissioners appointed by the Governor, as this Board was appointed, limited in power to the granting of leases, don't you think that would operate in the interest of the State, and the people would come here and locate, knowing that they could get a lease only and not a grant? A. No, sir; I think they would be entirely opposed to it.

Q. In other words, is not the opposition due to the fact that they know they can get a grant and not to any inherent opposition against the theory? A. No, they know they can get a lease at 7%, but they prefer to purchase.

Q. They know they can get it? A. They know they can get a lease in perpetuity and pay 7%, but they don't do it, they take a grant, because they went to own the fee. I would not, incorporating a company, advise a company to attempt to float any bonds based upon property to which the State had a right at some time or other, twenty or thirty or fifty years hence to increase the amount of rentals for it.

Q. They do it in England? A. They do a great many things in England that you and I would not advise them to do here. But you find, as a business proposition, that people won't invest their money in that kind of property, and that you will retard the indus-

trial development of the State if you go back to that ancient system of leasing the Crown property.

Q. Is it not a fact that all the investor wants is security for his money? A. Yes, sir; and he can only get that by a grant.

Q. That is not borne out by history or by experience? I say it is not so in England or in the British Islands generally. However, I respect your theory.

Adjourned until Friday, October 26, at 10.30 a. m.

Saturday, October 13th, 1906.

The Committee met at the Adams Express pier, Jersey City, this morning at 10.30. Present: Senator Wakelee, Assemblymen Reid, Holcombe, Jones and Barber.

The Committee boarded a tug at the pier and proceeded northward along the West shore of the Hudson river, viewing first the Harsimus cove front of Jersey City. This cove is now occupied by the Pennsylvania railroad terminal and the Erie railroad terminal, with the exception of a single wharf at the foot of Morgan street, which is the grant made by the Riparian Commission in 1878 to the municipality of Jersey City. This grant has a front width of 130 feet.

North of the Pennsylvania and Erie railroad Terminals is the terminal of the Lackawanna road, where the new docks and ferry houses of this company are being constructed.

The water front occupied by these companies extends to the line of the City of Hoboken and all of this front has been either obtained by direct grant from the Legislature in 1869, or by subsequent grants through the Riparian Commission.

From the Hoboken City line northward, the Committee viewed the water front of the City of Hoboken, which is almost entirely taken up by the steamship lines and is now building up with very large and substantial piers and shipping facilities, reaching to Castle Point.

From Castle Point, the Committee proceeded northward, viewing the water front of the northerly part of Hoboken and the southerly part of Weehawken. Upon this front are various shipbuilding enterprises and dry docks, all located on lands under water granted by the Riparian Commission to the Hoboken Land and Improvement Company or to members of the Stevens family.

Next to the Hoboken Land and Improvement Company water front comes the Erie Railroad front; then the water front of the Delaware and Hudson Canal Company, which was formerly used as a large coal terminus but does not now appear to be in active use.

This brings the water front up to the King estate in Weehawken and to the first land under water on the Hudson river north of Jersey City still belonging to the State. Here, the Committee viewed two disconnected strips of land under water, each about 350 feet in width, which still belong to the State, applications for both of which have been made to the Commission and a price of $200 per foot fixed by the Board. In the case of one of these strips, the applicant has not yet agreed to take a conveyance, but in the case of the other strip the applicant has agreed to accept a conveyance at the price named. The Commission has executed a lease in perpetuity for this land with provision for the conversion of the same into a grant in fee, and the lease is now in the hands of the Governor for his consideration.

Immediately to the north of the King front, is the terminus of the West Shore Railroad Company, which is now owned by the New York Central Railroad Company.

The holding of the West Shore Railroad Company, under conveyance by the Riparian Commission, is about a mile and a quarter in length and extends to the Wilcox Lard Refining Company and to a small tract of land under water about 300 feet in width, owned by the Erie Railroad Company.

We next passed by about half a mile of land under water granted to John Meeks in 1869, which brought us to the second section of land under water owned by the State of New Jersey, which is known as the "Shamberg" tract at Bulls Ferry. This tract is about 1,600 feet in length, cut about in half, however, by a small tract about 50 feet in width, leased by the State in 1894, leaving two tracts each of about 800 feet in width, one on either side.

Immediately north of this Shamberg tract at Bulls Ferry is the third tract of land under water still belonging to the State, about 300 feet in width, which has been applied for by the owner of the upland and a price of $150 a foot placed upon it by the Commission, which price has not yet been accepted by the applicant.

Next to this is a front of about half a mile in extent, which is wholly occupied by industries of one kind and another; the Pyle's Pearline factory being one (part of which is referred to in the investigation as the grant to the "Water Front Improvement Company," made in 1903 at $60 a foot); The Hudson River Chemical Works another; and another known as the New York Glucose Company, (referred to in the investigation as the Morris Building Company; a part of its water front being granted to the Morris Building Company at $40 a foot in 1900.)

The Committee continued north and came next to the fourth

tract of land under water which still belongs to the State, being about 500 feet in width. The owner of the upland has applied for this land and the Riparian Commission has fixed a price of $150 a foot, which price has not yet been accepted.

This brought the Committee to the Hudson River Terminal of the New York, Susquehanna and Western Railroad Company, at the mouth of its tunnel and in front of which the company owns about 1,400 feet leased to it by the Riparian Commission in 1893 and converted into a grant in 1905, and now occupied by the terminal wharves of said company.

Next come a number of small grants, the first one of which was made to Ellis & Company in 1895 at the rate of $87 a foot, and the other grants to Ellis & Company, Myers, and Hinners, made about this time, which brings us to the fifth tract of land under water still belonging to the State, about 600 feet in width. This has been applied for by the owner of the upland and a price of $125 a foot fixed, which price has not yet been accepted.

Adjoining this land is a strip about 700 feet in width, all of which has been granted by the State and is now largely occupied by the Valvoline Oil Company, which is the successor to Ellis & Company.

The Committee came next to the sixth tract of land under water still belonging to the State, about 1,600 feet in length. The owner of the upland has applied for this tract and the Board has fixed a price of $100 a foot, which has not yet been accepted.

Next came a grant made to John Eisele in 1903 of about 350 feet, at the rate of $60 a foot, which is numbered 21 on the map submitted herewith,

Adjoining the Eisele grant is the grant to the Knickerbocker Sugar Refining Company, which is No. 22 on the map. An extensive sugar refining plant has been built on this grant.

We then came to the seventh tract of water front land still belonging to the State, about 600 feet in width, which brings us to several small tracts, two of them being what has been referred to in the investigation as the "McKenna Grants," (Nos. 23 and 24 on the map), which were granted at about $40 a foot.

Then the Committee viewed what is known as Pleasant Valley Landing on the river, and to a strip of water front still belonging to the State, 1,500 feet in length. A part of the lower end of this has been applied for by the owner of the upland. The Commission fixed a price of $85 a foot; the price was accepted, and a conveyance has been signed by the Board and is now in the hands of the Governor for his consideration.

Then about 1,000 feet front, part of which was granted to P. San-

ford Ross in 1892, and the northerly 300 feet of which (No. 28 on map) was leased in perpetuity to the Edgewater Basin Company in 1906, at the price of $70 a foot.

The Committee then inspected a strip of about 2,000 feet of water front, still belonging to the State, which is a very valuable section. Next to this is a grant of about 275 feet (No. 29 on the map), made to Edward H. Coffin in 1882, located between the State's land and that which has been referred to in the investigation as the "Goetschius Grant" (numbered on the map 30 and 31, and so numbered because the grant covered two tracts leased by the State, through the Riparian Commission, to the Annett heirs in 1874.) This grant is one upon which considerable testimony has been taken in the investigation.

This is at the historical point on the Hudson river called Fort Lee Landing and is the southern terminus of the Palisades or bluff of Palisades Park, although the water front is not set aside for the Palisades Park until about a mile and a half to the north, or about the north end of Ross' upper filling, where the Palisades Park takes in the Palisades and talus down to the water's edge, north to the State line.

It appeared from the view gotten on this trip up the river, from Jersey City to Fort Lee, that there was a very active development and occupation of the water front of this section and the railroad terminals and manufacturing plants located there seem to be very large and important enterprises. The character of the steamship wharves, the important lines occupying these wharves and the nature of industries of different kinds indicate the importance and prosperity of this portion of the water front of New Jersey.

The Committee turned and started down the river, re-passing all of the places noted on the trip up, and entered the Morris canal basin, which has been known as the "shovel," being a tract of land under water on the Hudson river, 960 feet in width, extending back to Washington street in Jersey City, giving it the shape somewhat, and from that the name, of a shovel.

This tract of land under water was leased to the Morris Canal and Banking Company by act of the Legislature of 1867, page 251, and was subsequently, on July 12th, 1889, granted in fee to the Lehigh Valley Railroad Company, as successors or assignee of the rights of the Morris Canal and Banking Company.

The Committee proceeded through this basin and passageway, 200 feet in width, into the 200 feet tide water basin, which is part of the 500 foot basin established by the Legislature under act of April 4th, 1872, page 1356. From this point the Committee viewed the

piers of the Lehigh Valley Railroad Company, which are constructed diagonally with the line of the basin, for the purpose of giving greater length, as the width of the grant is not permissible, if constructed at right angles. These piers are constructed on lands under water granted by the State to the West Line Railroad Company, under act of March 19th, 1872, page 309.

The Committee also viewed from this point the section known as the grant to the municipality of Jersey City, lying in Communipaw Cove, to the south of Jersey City, under act of April 4th, 1872, consisting of about 19 acres. This land under water is, however, separated from the 200 foot basin by the remaining 300 feet of the original basin of 1872, which has been filled in and is now occupied by the Central Railroad.

What is known as the "Morris Canal Coal Basin" lies to the north of this "shovel," and is separated from it by a coal pier some 100 feet in width. The "Morris Canal Coal Basin," which is a basin of irregular shape about 150 feet in width and extending from Washington street easterly to the Hudson river, should not be confused with the larger basin of the Morris Canal and Banking Company now held, under grant by the State, by the Lehigh Valley Railroad Company; the smaller basin being really a continuation and a widening out of the Morris canal that terminates at Washington street and in which the canal boats carrying coal and other products found their harbor and from which they were distributed to the points of designation.

The Committee returned to the Hudson river and proceeded down the bay, viewing as they passed, the Ellis Island Emigrant station, around which, in November, 1904, the Riparian Commission made a grant to the United States government of lands under water, thus securing from the government recognition that the State of New Jersey had the title in fee to the land under water surrounding said island.

The Committee also viewed the warehouses of the National Storage Company, access to which is gained by means of a channel some 200 feet in width, dredged partly through the solid rock to a depth of some 25 feet at mean low water.

Proceeding southeast the Committee reached a point opposite Cavan Point, which is the southern limit of the main part of the grant, by the Riparian Commission, of November 12th, 1874, to the Central Railroad Company, for which the State received the lump sum of $300,000.

Proceeding southeast, the Committee viewed the operations from the Pennslyvania Railroad freight terminal, which is an extensive

operation requiring the filling in of hundreds of acres of flat land in order to make a freight terminal. The outer edge of this is still over half a mile inshore from the line of commercially navigable water, and access must be had by means of an expensively constructed and dredged ship channel. The dredging of this channel is now under way.

The Committee, proceeding still further south, reached a point opposite Robbins Reef Light and the first pieces of property of the State in New York bay, south of Jersey City, about a quarter of a mile in width, are located here.

Proceeding from this point, outside of Robbins Reef Light, the Committee entered the Kill von Kull, the channel, about 1,000 feet in width, separating Staten Island, New York, from Constables Hook in Bayonne, New Jersey. Constables Hook is that part of Bayonne in which the Standard Oil Company has its large plant and where a number of other similar industries are actively engaged in manufacturing.

All of the land under water on the New Jersey or northerly side of this Kill von Kull has been granted to different shore owners and is now occupied by these industries; and after passing the coal piers of the Central Railroad Company the Committee viewed the oil refinery of the Guffey Petroleum Company. This company holds a grant from the State, which has been referred to in the investigation as the "Guffey Grant."

The Committee then proceeded on through the Kills, past Bergen Point. There is some water front land at this point for which application has been made and upon which the Riparian Commission has fixed a price of from $50 to $70 a foot, but the applicants have so far refused to accept it, claiming that the price is prohibitive.

There is very little land of the State left on this improved waterway, about 2,000 feet only in length in the entire three miles which is the length of the connecting stream between New York bay and Newark bay.

The Committee proceed as far as Shooters' Island, which is in the southern end of Newark Bay, about half way between the end of Kill von Kull and the beginning of Staten Island Sound, which Staten Island Sound is the dividing line between Staten Island, New York, and Union and Middlesex Counties, New Jersey, and connects Newark bay with Raritan bay.

Shooters' Island is, however, in New York State; the Boundary Line Commissioners, in 1887, having fixed the boundary between New Jersey and New York to run just touching the northerly side of Shooters' Island, leaving it wholly within the State of New York,

and its riparian interests, therefore, are not the concern of the Committee.

From this point the Committee returned to Jersey City.

Information as to the details of grants, ownership and prices of land was furnished chiefly by Mr. Payne, Engineer of the Riparian Commission, who accompanied the Committee.

A map showing lands along the Hudson river is submitted with this report.

A. N. Barber,

Sec'y.

SENATE CHAMBER, STATE HOUSE.

Trenton, N. J., Friday, Oct. 26, 1906.

Meeting of Special Committee of the New Jersey Legislature to Investigate the Granting of Riparian Lands by the State, etc.

PRESENT:

SENATOR WAKELEE (chairman), ASSEMBLYMEN BARBER and JONES, ASSISTANT ATTORNEY-GENERAL DUFFIELD.

CHAIRMAN WAKELEE.—I desire to say that although there may not be a quorum present in my judgment the committee should proceed as witnesses are waiting and possibly other members of the Committee may come in and, at any rate, the members who are not present will be furnished with typewritten copies of the proceedings.

MR. DUFFIELD.—The Attorney-General requested me to state to the Committee that owing to the fact that he is engaged in the trial of an important cause in the United States Circuit Court, which has continued beyond his anticipations, he is unable to be present today and has asked me to be present and conduct the examination.

The Attorney-General also wished me to call the attention of the Committee to the fact that he has, as he previously stated to the Committee, been engaged in endeavoring to secure the attendance of the officials of the Edgewater and Fort Lee Railroad Company, in order to ascertain whether or not any improper influences were used for securing the valuable grant which that company secured at such a low rental and to investigate generally the entire matter of the grant to that corporation. Following out this plan Mr. Brownell was communicated with and, upon failing to receive any reply, Mr. Underwood, the president of the Erie Railroad, was written to. It has since transpired that the failure of Mr. Brownell to reply was not due to any discourtesy on his part but merely to the fact that he was absent at the time the letter was sent. The At-

torney-General had requested him to be present at the last meeting of this Committee, and to give his version or to give such information as he might, concerning the making of this grant, and in reply to that letter, under date of October 18, 1906, the Attorney-General received a letter from Mr. Brownell, which I will read for the purpose of having it incorporated in the minutes. It is as follows:

New York, October 18, 1906.

HON. ROBERT H. MCCARTER:

ATTORNEY GENERAL,
Newark, N. J.

Dear Mr. McCarter:

Upon my return yesterday, from a business trip, I found your letter of the 15th instant, which arrived during my absence.

I have a prior appointment for an important conference here tomorrow between counsel and officials of a number of railroad companies, some of whom are coming from a distance, which would prevent my going to Trenton at that time as requested by you, and, moreover, I have no personal knowledge in regard to the acquisition by the Edgewater & Fort Lee Railroad Company, in 1902, of its original license to construct its road over lands under water. My first knowledge of and connection with the affairs of that company was in 1903, after my election as Vice-President of the New York, Susquehanna & Western Railroad Company (of which the Edgewater & Fort Lee Company is a subsidiary company), when I succeeded Mr. E. B. Thomas as director and was also elected Vice-President. In 1902, when the grant referred to was made, the officers of the Edgewater & Fort Lee Railroad Company were:

President, J. M. Goetschius, now deceased.

Vice-President, Geo. M. Cummings, now President of the U. S. Mortgage & Trust Co.

Secretary, J. A. Middleton, now Vice President of Lehigh Valley R. R. Co.

Asst. Secretary, L. D. Smith, now Asst. Secretary of the Lehigh Valley R. R. Co.

Treasurer, J. W. Platten, now Vice President of the U. S. Mortgage & Trust Co.

I am informed that the matter of acquiring license from the Riparian Commissioners and right of way for a portion of its route was in the hands of its president, Mr. Goetschius, under the general charge and direction of Mr. Cummings, who was Vice President of the New York, Susquehanna & Western Railroad Company.

While I have no knowledge, except hearsay, of the affairs of the

company prior to my connection with it in 1903, I am familiar with its affairs since that time, including the application to the Riparian Commissioners for an extension of time for construction of road, which application was granted and approved by the Governor, and also, I believe, approved by you as to form, and the similar application recently made, both of which were made under my direction; and I have not the slightest objection to giving to you, or to any other proper person, any information in regard thereto at any time, assuming that such information is to be used for a proper purpose. With respect to the original license of 1902, I shall have to refer you to the parties who had charge of these matters and have knowledge thereof, except such facts as can be obtained from the Company's records, which, if you desire, I will enable you to obtain at any time you may find it convenient to call here, in which case I shall be glad to make an appointment by telephone.

I understand that the project for building the Edgewater & Fort Lee railroad, or at least that portion of it north of the Edgewater tunnel, largely originated with and was urged upon the Company by Mr. Goetschius and Mr. Sandford Ross as being essential to the commercial development of the locality in question, it being impracticable for railroad facilities to be afforded to that locality except in connection with the New York, Susquehanna & Western railroad. I do not think there is any person now living who is more familiar with the origin and history of the enterprise and the facts in connection with the granting of the original license and its extension in 1904, than Mr. Ross, who appeared before the Commission and the Governor on both occasions, and whose arguments and statement of facts showing the advantages to the State, property owners and the public generally, as well as to the Railroad Company, from the construction of this line, I have understood to have largely influenced the favorable action of the Board and Governor in the granting of those applications.

Yours very truly,

(Signed) GEO. F. BROWNELL,
Vice-President and General Solicitor.

Now, Mr. Chairman, you will observe that the two persons who had knowledge of this transaction, namely, Mr. Goetschius, who is now deceased, and Mr. Cummings, who is a non-resident of this State, renders it difficult at least to secure such information as would be of value to this Committee in that particular. It is somewhat singular that Mr. Goetschius, who figured so prominently in the matter of the Goetschius grant, also appears to have been the active and acting party in securing this valuable railroad license at

such a low figure. What significance there may be in these two facts I am not prepared to say, but it does stand out as somewhat singular that Mr. Goetschius was able to induce the Commission to make him personally the valuable grant which it did, for the consideration which he paid, and he was also able to induce that Commission in the case of a railroad company of which he was the president to make it the valuable grant for the consideration which the State received for that right.

Mr. Cummings is a non-resident of the state and it is difficult to say whether or not it will be possible to secure Mr. Cummings' attendance. It is difficult to say what an examination of these books may reveal, so that, speaking for the Attorney General, I simply desire at this time to say that an investigation will be made of these matters and, if possible, at a later day, before this committee this whole transaction will be thoroughly gone into. It may be that it will be impossible for us to produce any evidence, owing to the facts which I have stated, but if it is possible the committee may rest assured that the matter will be gone into thoroughly and such facts as may be elicited by the investigation to be made, will be placed before the committee for its consideration.

CHAIRMAN WAKELEE.—I do not think anything should go upon the record from which it might be inferred at a later day that Mr. Cummings was unwilling to come here and explain this matter to us.

MR. DUFFIELD.—Oh, no ; I do not mean to insinuate that at all and I am very glad the chairman called my attention to that. I do not mean to say that Mr. Cummings is unwilling to come and to testify fully ; the fact is he has not yet been communicated with and it is quite possible that he may come very willingly and testify.

CHAIRMAN WAKELEE.—Yes; I know Mr. Cummings very well and I haven't any doubt that he will very glady come and tell us all he knows about it.

MR. DUFFIELD.—Yes ; I merely mentioned that so as to show that there is no way of compelling his attendance but as Senator Wakelee says it is quite possible that he will come if he is requested to do so.

CHAIRMAN WAKELEE.—Are there any other witnesses in attendance today ?.

MR. DUFFIELD.—Yes ; Mr. Albertson, chairman of the Atlantic County Oyster Commission, is here and there are several representatives from various boards of trade as I understand it who desire to be heard, and I wish to make a short statement myself.

I understand Mr. Swayze was the last witness sworn at the pre-

vious session, and as I desire to continue somewhat on the same line it might be well, and make the record more complete, if I were sworn as a witness now.

CHAIRMAN WAKELEE.—Very well; suppose you take the stand.

EDWARD D. DUFFIELD sworn.

I succeeded Mr. John L. Swayze in the position of Assistant Attorney-General of this state, taking office April 1st, 1905. Just prior to my assuming the duties of that office I had a conference with Governor Stokes and he called my attention to the fact of the unsatisfactory condition in which the riparian leases and back rentals were and suggested that as soon as I familiarized myself with the duties of office I should take up the question of the collection of the back riparian rentals. I found the unsatisfactory condition, which Mr. Swayze described at length in his testimony, existed, namely, that there seemed to be no method whatever of compelling the lessees to pay the rentals as the same accrued. In many instances, as Mr. Swayze has said, it was impossible to find out who were the real owners of the leases; the land in some cases had washed away and in other cases of valuable grants the title had been acquired by descent and it was impossible to locate the person responsible for it, and there seemed to be no way in which we could get rid of these leases, and recover the land for the state, or, if we could not do that, collect the rental. We did, however, take up the question of the collection of the rentals and where we were able to ascertain the lessees we proceeded against them with some insistence. I could not state off hand just how much money was collected during the time that I had been in the position of Assistant Attorney-General except that they amounted to, I think I am safe in saying, several thousand dollars; quite recently we collected quite a large sum. We have been hampered throughout by the unsatisfactory conditions which existed prior to this year and which Mr. Swayze has described in his testimony at some length.

I find on an examination of our letter book that in September, 1905, in order to do all that could be done, I wrote a letter to the State Treasurer, which is as follows:

On taking up the account of the collection of moneys due the State on account of riparian leases, I find that our record of the leases received from your office is in such condition that it is now impossible for us to determine exactly what leases are now in our office for collection, and what leases have been received from you and returned to you. Will you be good enough to advise this office?

1. The leases which have been forwarded by you to this office, on which there is an arrears of rental.

2. The leases which you have handed to us, for correction, and upon which the rentals have been subsequently paid, and the leases restored to you, giving, if possible, the amount in each instance.

3. Any additional leases now in arrears upon which you desire the collections to be made.

I have taken up this matter of collection of moneys due the State on account of riparian leases in order that the matter may be cleared up, and the State receive the revenue to which it is entitled, or secure reversion of the land grant.

I know that I may bespeak your assistance in this matter.

The treasurer then had some correspondence with us and, as I say, without going through the details of the correspondence, the result was that we did collect quite a sum of money.

The condition was so unsatisfactory, however, that Mr. Backus of our office,who has been connected with the office of the Attorney-General for a long time, and is familiar with all the difficulties that have arisen in this matter of the collection of riparian rents, prepared under my supervision an act for introduction in the legislature; we changed somewhat the form which Mr. Swayze had adopted the previous year and introduced and which he had not succeeded in securing the passage of, and Mr. Backus prepared under my suggestion an act which appears as chapter 83 of the session laws of this year; it seems to me this act provides a comprehensive method by which we can either recover back the land for the State or secure prompt payment of the rental. It provides briefly—I don't know that the Committee desires to go into the details of this act—but it briefly provides for the state treasurer furnishing to the Riparian Commission each year a list of the rentals which are in arrears, and that the riparian commission may then go on the land on which there are arrears and take possession, and it provides for certain methods of publication and that after the expiration of a certain time the land shall revert to the State. That act was approved April 6th, 1906, and by referring to the office letter book I find that on May 1st of this year I wrote to the Treasurer as follows:

I would respectfully call your attention to the provisions of Chapter 83 of the Session Laws of the current year. This act provides a method by which riparian leases, on which the rentals are in arrears, may be forfeited and the State retake the land covered thereby.

The act makes it a duty of the State Treasurer on or before the first Tuesday in January to make out a list of all riparian leases held by the State, on which rentals are in arrears and unpaid for the space of one year, and to transmit the same to the Board of Riparian Commissioners. As the Board will undoubtedly request us to pursue the lessees under these leases and to take the necessary steps to have them set aside, and as we would like to take this work up as soon as possible, we would be glad if you would forward to the Riparian Commissioners, at your early convenience, the list for this year.

That was written to the State Treasurer under date of May 1st of this year.

I simply insert that evidence for the purpose of showing that the criticism, which has been directed, as I understand, by the former counsel of the Board against the Attorney-General's Department, is unfounded, and that we have pursued this matter with due diligence, first, by collecting such of the rentals as could be collected, secondly, by securing the passage of an act which would enable the State to recover these lands in an expeditious way, and third, almost immediately after the approval of this act, by trying to put it into operation.

CHAIRMAN WAKELEE.—Does the Attorney-General think that the act you have just referred to is sufficient, or have you any suggestions to make in that respect?

MR. DUFFIELD.—The only suggestion I have to make is this: I think the act entirely covers the difficulty of securing the lands for the State where rentals have been unpaid; it does not aid us at all in the collection of the rentals. I think the difficulty which has arisen in the matter of collecting these rentals has been from the fact that it has been nobody's business definitely fixed to collect these rentals. It is true they have been turned over to the Treasurer for collection, but he has of course no familiarity with the lessees; he simply knows them by their post office address and can do little more than to send out either personally, or through our office, dunning letters. If the object is merely to protect the State's right in the land and secure back at once lands which may have been granted where the rental has not been paid, it seems to me the act of this year gives an easy and expeditious method of doing that; and it does more than that; it places the responsibility of this where it seems to me it ought to be placed, that is, what the Treasurer ought to do, is to receive the moneys, collected, and it becomes his duty to notify the Riparian Commission what leases are in arrears

and the Riparian Commission has an easy way in which it may recover these lands and then release them, and having once cleared up this accumulated mass of old leases, wiped the slate clear of them; the State will then own free and clear practically all that land on which there are arrearages of rental and if hereafter this statute is followed strictly and the treasurer does, as I have no doubt, of course, he will do, comply with it, and the Riparian Commissioners, as there is no reason to doubt they will do, insist on either payment or possession of the land, there is no reason that I can see why they should ever get into the condition they are in now in regard to these past arrearages of rentals. I think that is practically all I have to say, unless the committee desire to ask me questions or make suggestions.

I do want to say one thing more and that is this: since my taking the position of Assistant Attorney General Mr. Backus of the office, under my suggestion and to a small extent with my assistance, has made a careful examination of the old statutes, in order to see whether there was any of these legislative grants of such a character that they might be vacated, whether there were any grants under which any persons were enjoying privileges which apparently had lapsed; I regret to say, however, that after a careful examination lasting for several weeks of arduous work no results were produced of that kind; the matter was undertaken with high hopes but we unfortunately found that apparently the legislature had done its work efficiently, if not well.

If there are no other matters the Committee desire to enquire about from me, I will call Mr. Albertson as a witness.

CHAIRMAN WAKELEE.—Let Mr. Albertson be sworn.

LEVI C. ALBERTSON, sworn. Examined by Mr. Duffield:

Q. Where do you reside? A. Atlantic City.

Q. Do you hold an official position. A. Yes, sir.

Q. Under the State? A. Yes, sir.

Q. What is that? A. Member of the State Oyster Commission for the District of Atlantic county.

Q. You are the President of that Commission, are you not? A. Yes, sir.

Q. Mr. Albertson, this Commission is engaged in the investigation of the leasing of the State riparian land and we understand that you have, in connection with Mr. Horner, the superintendent of the Oyster Commission for Ocean county, certain complaints to make in regard to the leasing of oyster lands by the Riparian Com-

mission, in the face of protests from your Commission. I think that probably it would be more satisfactory to the Commission if you would state what has been done in that way and what objections you have to it, and what suggestions you have to make to the Committee in the way of any alterations or amendments to the law which you might think advisable. A. In 1905, Chapter 75, a law was passed organizing the Oyster Commission for the district of Atlantic county; it, as I understand it, placed all the lands under water in Atlantic county, that is the oyster and clam lands, under the jurisdiction of that Commission, with the direction that that Commission, before leasing any planting ground, should set apart such grounds as public seed beds and propagating grounds within the waters of Atlantic county, as in their judgment they deemed proper, and that was done. The lines were fixed and laid out and mapped, the river—the propagating grounds in their entirety were never surveyed ; we never had any appropriation to do that work, but they were set apart with a sufficient particularity to show where they were. The law provided that any persons who had used those grounds under any former practice or any other way, should have until the first of June, 1906, to take away whatever property they might have within those lines and by the first day of June, 1906, a number of persons, having had some of the grounds in use, according to custom, before, and having had it staked out, the oyster commission had the stakes removed and took possession of the ground that had been set apart as propagating grounds. Objection was made from several sources against the removal of those stakes and the only one that had reference to any Riparian grant was in the Mullica river. It appears that, without our knowledge at all up to that time, the grant had been made by the Riparian Commission to Mr. Sooy—two of them, Watson Sooy and Joel Sooy of Burlington county, to a large tract of land in Atlantic county on the Atlantic county side of the Mullica river, and they protested against the removal of their stakes. The stakes had been removed, however, and they appealed to the Attorney-General. The Attorney-General had authorized—practically directed—the removal of those stakes from the land belonging to the State which had been set aside by the State Commission and on investigation the Attorney-General saw the deed that had been made to the Sooys and ascertained that it appeared to convey to them in fee and their heirs and assigns forever for their especial use, all this land, and advised us that we had no jurisdiction over them. Of course the Oyster Commission regretted such a condition of affairs and so stated to the Attorney-General. We had previ-

ously to that, ascertained that applications were being made for riparian lands under water in Motts Creek, which was another locality which had been set aside, as a public propagating ground, by the Commission. This part of the land embraced some of the finest propagating ground in the county and we protested against the granting of that lease by the Riparian Commission.

Q. In what way did you make your protest, orally or in writing? A. By writing to the Attorney-General. I have the letters here if you desire to see them.

Q. Let us have them. A. The first communication was about May 15, 1905, within a couple of weeks after we were actively engaged in our duties; I believe we commenced on the third. We ascertained that parties named J. W. Parker & Brother of Ocean county had made application for Riparian lands under the tidal waters of New Jersey in the southern part of Great Bay, near Egg Island; this was not propagating ground but oyster planting ground, subject to lease under the law that we were acting under, and I wrote to Mr. Payne a letter, a copy of which is here, and his reply.

Q. Suppose you read the letter and his reply. A. The letter to him is as follows:

Atlantic City, N. J., May 15th, 1905.

HON. J. C. PAYNE, Secretary,
Riparian Commission
of New Jersey.
Commercial Trust
Building, Jersey City,
N. J.

Dear Sir:

I am advised that Messrs. J. W. Parker and Brother are engaged in making a survey of tidal lands of New Jersey at or near what are known as Egg Islands at the southeast end of Great Bay, in the County of Atlantic. I am further advised these lands are valuable oyster lands.

I beg to call your attention to an act of the Legislature of New Jersey entitled "An Act for the better regulation and control of the taking and planting and cultivating of oysters and clams on lands lying under the tidal waters of the County of Atlantic, in the State of New Jersey, approved March 30th, 1905 (Chapter 75, Laws of New Jersey, 1905).

Which act provides that all oyster grounds, lands and beds included within lands of the State of New Jersey under the tidal waters of

the County of Atlantic shall be under the exclusive regulation and control of a State Oyster Commission &c. "See Act referred to for details."

I beg leave most respectfully to protest the granting of any deed, lease or other privilege coming within the scope of the act referred to, having reference to any lands under the tidal waters of the County of Atlantic, when such lands are oyster lands, as related in said act.

Very respectfully,
LEVI C. ALBERTSON,
Pres. the State Oyster Commission
for the Dist. of Atlantic Co.

On May 15th I received this reply:

HON. LEVI C. ALBERTSON, May 16th, 1905.
Presd't Oyster Commission, District of Atlantic Co.,
Real Estate & Law Bldg.,
Atlantic City, N. J.

Dear Sir:

I have your favor of the 15th instant in relation to the matter of oyster lands in Atlantic county, and I shall take pleasure in presenting the same to the board at its next meeting on May 31st.

Yours respectfully,
JOHN C. PAYNE,
Secty. & Eng'r.

The next letter is dated June 1st and is from the Secretary of the Riparian Commission, as follows:

June 1st, 1905.

LEVI C. ALBERTSON, ESQ.,
Pres't State Oyster Commission Dist. of Atlantic County,
Room 20 Real Estate & Law Bldg.,
Atlantic City, N. J.

Dear Sir:

Your communication of May 15th in relation to grants of lands under water in Atlantic county, was presented to the Board at a meeting held yesterday, and I am directed to say that the Commission desire to work in harmony with the work of your Commission, and in that connection inform you that application has been made by Mr. Lemuel A. White for about 2,450 feet front on the

westerly side of Absecon Bay, about one-half a mile south of Absecon Creek, and to ask whether in your judgment the granting of this application would conflict with the duties of your Commission.

Awaiting your reply, I am,

Yours respectfully,
JOHN C. PAYNE,
Secty. & Eng'r.

In response to that communication on June 3, 1905, I wrote Mr. Payne as follows:

Atlantic City, N. J., June 3d, 1905.

HON. JOHN C. PAYNE,
Sec. & Eng'r.,
Riparian Com'n. of N. J.,
Commercial Trust Building,
Jersey City, N. J.

Dear Sir:

Yours of June 1st inst. in re-application for riparian lease or deed to Lemuel A. White, for lands in Absecon Bay, is rec'd.

I am authorized and directed by the Oyster Commission for the District of Atlantic county, to say:

We are advised that the land under water referred to is oyster or clam land, or both combined; that while we do not desire to interfere with or retard any improvements which may be contemplated by way of building wharves or docks or bulkheads, we do object and protest any use or control being given to any person for the use of lands under water which will interfere with or endanger the use of lands by oyster planters or clammers, under the provisions of Chapter 75 Laws of New Jersoy, 1905.

The lands referred to are subject to lease to planters of oysters by the Commission, on application, provided the applicant or applicants are citizens of the State of New Jersey.

Thanking you for courtesies extended, I am,

Very truly yours,
Pres. Oyster Com. for Atlantic Co.

I have a letter here now to the Attorney-General in the order in which they come.

Does the Committee desire to hear that? This letter to the Attorney-General simply says: "I enclose copy of letter sent this day to the Riparian Commission of New Jersey.

"May I request you to take up the question of jurisdiction in these matters. If the Riparian Commission may issue deeds or leases to the natural seed beds and grounds reserved for the use of all the people of the State, there appears to me no necessity exists for other commissions having control of lands (Oyster and Clam) under tidal waters.

Very respectfully,
LEVI C. ALBERTSON.
Pres. Oyster Com."

This is the letter referred to that was sent to the Honorable John C. Payne :

Atlantic City, N. J., June 20, 1905.

HON. J. C. PAYNE,
Sec. & Engineer,
The Riparian Com.
Jersey City, N. J.

Dear Sir :

We are advised that one Mr. Strickland has made application and been granted, has paid for and is promised delivery of deed or lease, by your Commission, to Oyster Lands under the tidal waters of Atlantic county, located at the mouth of "Motts Creek," on westerly side of Great Bay. A Mr. Bailey is exhibiting letters from your Commission setting out above statement. We have not seen the letters, but our information comes from reliable sources ; the oyster lands referred to are among the most valuable natural seed beds in Atlantic county, and have existed for the past fifty (50) years or more.

And we most earnestly and respectfully protest the granting of any deed or lease or other control of this land, or any other oyster or clam lands under the tidal waters of Atlantic county subject to the control and regulation of our Commission by the provisions of Chapter 75, Laws of New Jersey, approved March 30th, 1905.

I have sent a copy of this letter to the Attorney-General of the State, and I request you to join us in some definite determination of the status of the matter, that friction may be avoided.

Very respectfully,
LEVI C. ALBERTSON,
Pres. Oyster Com.
Atlantic Co., N. J.

Copy mailed to Attorney-General McCarter.

In response to that communication dated June 21, I think the next day, I have the following :

Dear Sir :

I have your favor of the 20th instant in relation to proposed grant to Mr. Strickland near the mouth of Motts Creek.

Application was made by Mr. Strickland as the riparian owner, and the Board decided to make a grant for the purpose of improvement. This grant will be referred to the Attorney-General for his consideration before it is delivered, and I am sure this Board will be very glad to accord your Commission a hearing in the matter if you desire it.

The Board had before it your letter of June 3rd in the matter of proposed grant to Lemuel A. White on Absecon Bay, and the question involved there was similar to the question involved in the Motts Creek grant, and the same form of grant would be used.

This grant will not be delivered until the Attorney-General approves it, and I am sure, as I say, you will have an opportunity to be heard before this is finally disposed of.

I am very glad to have your letter and am sure the board will give it every consideration.

Yours very truly,
JOHN C. PAYNE,
Secty. & Eng'r.

Then follows a letter from the Attorney-General dated June 28, 1905, on the same subject, to this effect :

Trenton, N. J., June 28, 1905.

LEVI C. ALBERTSON, ESQ.,
Prest. Atlantic County Oyster Commission,
Atlantic City, N. J.

Dear Sir :

Your favor of the 20th, enclosing a copy of your letter of the same date to Mr. Payne, the Secretary and Engineer of the Riparian Commission, was duly received. Since that time I have had the opportunity to confer with Mr. Payne concerning the matter therein referred to, and have also seen your previous letter to him in which you state that the Oyster Commission has no objection to grants made by the Riparian Commission so long as the grantee therein only expects to wharf out or otherwise improve in the same way. Under the case of Polhemus v. Bateman, 31 Vroom, 163, it would seem to me that the mere fact that a grant is made by the Riparian Commission for the purposes above stated in no

way interferes with the oyster rights that may exist in such lands. It would seem, therefore, that there is no occasion for confusion under such conditions between the oyster rights and those arising under riparian grants.

Very respectfully,
ROBERT H. MCCARTER,
Attorney-General.

The next is a letter to the Riparian Commission dated August 15, 1906, and is as follows :

Atlantic City, N. J., Aug. 15, 1906.

THE RIPARIAN COMMISSION,
Jno. C. Payne, Sec. and Engr.
Jersey City, N. J.

Gentlemen :

We have a copy of grant and map of lands made to E. C. Sooy and Watson T. Sooy, Nov. 25th, 1903, in fee, lands located in Mullica river, comprising some of the most valuable Oyster propagating grounds in Atlantic county.

We are advised that Mr. James Gale has made application for and been given a grant in fee for his exclusive use and his heirs and assigns. "Similar to the Sooy grant above referred to," dated July this year, 1906.

We cannot understand how this can be, in view of the correspondence with your Commission in June of 1905.

Will you kindly advise this Commission :

The name of, location of riparian owners of, lands in Mullica river, Patcong Creek, Absecon Creek, Oyster Creek, Motts Creek, from the respective mouths thereof towards the source. Each of these localities were set apart as public propagating ground for oysters, by this Commission in June, 1905. And to avoid friction with riparian owners (if they have the title in fee) we wish to be able to avoid encroachment on such owners, in the protection of the seed oyster beds and grounds.

What we desire is :

Who have deeds for grants in fee for their exclusive use and ownership.

And who have the usual deed (without erasures) for bulkheading, filling and improvement, not excluding the public from enjoyment of natural privileges.

Very truly yours,
LEVI C. ALBERTSON,
Pres. Oyster Com.
Dist. Atlantic Co. N. J.

I have never received any reply to that letter from the Riparian Commission.

In conjunction with the Sooy matter there is the following letter:

Trenton, N. J., Aug. 21, 1906.

LEVI C. ALBERTSON, ESQ.,
Atlantic City, N. J.,

Dear Sir:

Your letter of the 16th, in reference to the Sooy matter, is at hand and will receive proper attention. I do not feel called upon, however, to suggest any complaints that you may have to the Riparian Commission. It seems to me that if their proceedings do not square with your own ideas of what is right, you should, on behalf of your Commission, present any complaint to them, and I have no doubt that it will be properly considered.

Very truly yours,
ROBERT H. MCCARTER,
Attorney-General.

I have another letter, or a copy of a letter, to the Attorney-General, dated August 16, 1906, as follows:

Atlantic City, N. J., Aug. 16, 1906.

HON. ROBERT H. MCCARTER,
Atty. General,
Trenton, N. J.

My Dear Sir:

I received your letter of July 26th ultimo in re riparian grant to E. C. Sooy and Watson T. Sooy. I have delayed answer or acknowledgment until we could obtain copy of grant, &c. On Tuesday of this week the Messrs. Sooy, with the assistance of Supt. Smith, Comr. Conover and the Oyster Guards of Mullica river, reset the stakes which had been removed. And we now know, I trust, enough to "keep away" from their lands. We are advised that other grants have been made this year, 1906, similar to the Sooy grant for lands adjacent to the Sooy lands. We do not see how this can be true in view of the correspondence with the Riparian Commission of June, 1905, "that no grant would be made in conflict with the jurisdiction of the Oyster Commission's authority of the lands under water for oysters or fishing."

We have written the Riparian Commissioners for information as to what kind of grants have been made within the reserved propagating grounds so that we may know just what to do.

The Sooy grants, as we see it, make the existence of the Oyster Commission almost, if not quite, useless, so far as Mullica river is concerned, as this grant in fee includes practically all the propagaing ground in that river susceptible of improvement.

I do not propose to criticise the Riparian Commission for what has been done or may hereafter be done, but it is certainly very discouraging to find that the rights and privileges of the public to be conserved by the Oyster Commission under Chapter 75, Laws of 1905, have been or are being sold outright, in perpetuity, for a paltry one thousand dollars, when the State should receive many times that sum annually as rental for the grant. If it is the policy of the State to lease, grant or sell these natural public privileges, in justice to the Oyster Commission and in the interest of the State and its people especially, the oyster men and planters of Atlantic county request that you look into this matter at your convenience and determine whether or not proceedings can or should be instituted to revoke these grants in fee for these natural privileges.

Very respectfully,

Pres. Oyster Commission,
District of Atlantic Co.,
N. J.

Then there is another letter, in reply to that practically, from the Attorney-General as follows:

My attention has been called to your letter of 16th to Mr. Backes, touching the difference between your Commission and Messrs. E. C. Sooy and Watson T. Sooy, as to the relative rights of your Commission and the Messrs. Sooy upon certain lands under water in Mullica river. I have in my possession an original grant from the Riparian Commission to the Messrs. Sooy, dated November 25, 1903, by which these gentlemen were given a grant of certain property "with the right and privilege, under the covenants and conditions of this grant, to appropriate the lands under water above described to them and their exclusive private uses." Assuming that the land described in this grant is the same as that about which the dispute above referred to exists, my opinion is that your Commission has no right to interfere with the oyster beds of the Messrs. Sooy, located thereon. As you know, by the last proviso of the 5th section of Chapter 75 of the laws of 1905, creating your Commission, it was enacted, "That nothing in this act shall be construed to give said Commission jurisdiction or control over any lands to which the riparian grant has been made by the Riparian

Commissioners of this State." Inasmuch as a Riparian grant had therefore been made to the Messrs. Sooy, it seems to me clear that your Commission has no jurisdiction over the locus in quo. Nor is this view inconsistent with my opinion to you, dated June 28, 1905, to which you have naturally referred. No specific riparian grant was before me at the time that opinion was written, and therefore I assumed that the riparian grants contained the clause ordinarily inserted, and to which special reference was made in the case of Polhemus vs. Bateman, 31 Vroom, 163. That case determined that a grantee in a riparian grant was limited to the strict rights contained in his grant, and inasmuch as the grant then under consideration contained the clause "with the right, (in the grantee) liberty, privilege and franchise to exclude the tide water from so much of the land above described as lie under tide-water, by filling in or otherwise improving the same, and to appropriate the lands above described to his exclusive private uses," the decision was that the general effect of the grant was limited to the privilege contained in this clause, and that therefore until the grantee had exercised the right by reclamation and filling in to devote the property to his exclusive use, he had no rights therein superior to the public right of fishery. In cases where grants are similar to that construed in the Bateman case, my opinion of June 28, 1905, still holds good. But it is significant that these words are stricken out of the Sooy grant and so it seems to me that these gentlemen are not compelled to fill in and reclaim before they are entitled to the exclusive use of the property as were the grantees in the Bateman case. For these reasons I conclude that your commission has no jurisdiction over the property included in the Sooy grant.

Very truly yours,

ROBERT H. MCCARTER,

Attorney-General.

Of course we have not undertaken to exercise any jurisdiction since. I have a copy of the deed to the Sooys here for the consideration of this Committee if they choose to have it. The words that the Attorney-General referred to in his letter as being significantly removed are shown on the face of the paper, and I also have a map of the Sooy grant (these papers are a little worn, and they were in a railroad accident and got run over) showing the line of the Sooy grant. I do not know how many acres that contains but it contains a very large area of the public propagating grounds, susceptible of improvement and which have been in the use of the

public for—well, ever since oysters grew there and anybody got them.

CHAIRMAN WAKELEE.—Let that grant be entered into the minutes and let the map be marked as an exhibit.

(The grant referred to and here offered in evidence is as follows :)

THE STATE OF NEW JERSEY.

To all to whom these presents shall come, or may concern, Greeting :

Whereas, Pursuant to an act of the Legislature of said State, approved March 21st, 1871, entitled "A further supplement to an act entitled An act to ascertain the rights of the State and of riparian owners in the lands lying under the wators of the Bay of New York and elsewhere in this State," approved April eleventh, one thousand eight hundred and sixty-four, and other acts and joint resolutions of the Legislature of said State, E. G. Sooy and Watson T. Sooy of Green Bank, in the County of Burlington, State of New Jersey, being the owners of lands fronting on Mullica river, Township of Galloway, in ——— in the County of Atlantic and State of New Jersey, which lie abeve high water mark and in front of which the lands under water hereinafter described are situated, has applied to the Riparian Commissioners of said State for a grant of the said lands under water and to have the said Commissioners fix the boundaries of the said lands under water, and determine the price of compensation to be paid to the said State therefor, and the terms and conditions of said grant :

And Whereas, the said Riparian Commissioners, to wit : Franklin Murphy, Governor, Willard C. Fisk, William Cloke, John I. Holt, and John J. Farrell, having due regard to the interest of navigation and the interests of the State, have agreed to grant the lands under water hereinafter mentioned. upon the terms herein set forth and have determined the sum of one thousand dollars as the price or reasonable compensation to be paid to the State for the said lands.

Now, therefore, the State of New Jersey, by the said Riparian Commissioners, the Governor approving, in consideration of the premises, the terms and conditions hereinafter contained and the said sum of one thousand dollars duly paid by the said E. C. Sooy and Watson T. Sooy to the said State the receipt whereof is hereby acknowledged, does hereby grant, bargain, sell and convey, subject to the terms, covenants and conditions and limitations herein contained unto the said E. C. Sooy and Watson T. Sooy and to their heirs and assigns forever—All that parcel of land flooded by the

tide water, situated in the Township of Galloway, in the County of Atlantic, and State of New Jersey, described as follows: Beginning at a point in the high water line or meadow bank of southerly shore of Mullica River, where the same is intersected by the westerly line of land of said E. C. Sooy and Watson T. Sooy, and from thence due north three hundred feet (300 Ft.) to the exterior line established by the Commissioners appointed under the authority of an Act entitled "An act to ascertain the rights of the State and of the riparian owner in the lands lying under the waters of the Bay of New York and elsewhere in this State, approved April 11, A. D. 1864, and the supplements thereto"; Thence northeasterly along said exterior line as shown on the map hereto annexed three thousand feet (3000 Ft.) more or less to a point one hundred feet north westerly from the high water line or meadow bank of the southerly shore of Mullica River at Swimming-over Point; Thence still along said exterior line curving to the right as shown on the map here to annexed and one hundred feet northerly and north-easterly from the high water line or meadow bank of Mullica river at Swimming-over Point, seven hundred feet more or less to a point; Thence still along said exterior line as shown on map here to annexed nearly due south twelve hundred and fifty feet (1250 Ft.) more or less to a point distant four hundred feet easterly from the high-water line or meadow bank of the westerly shore of Mullica river; Thence still along said exterior line in a southerly direction as shown on the map hereto annexed about twelve hundred and fifty feet (1250 Ft.) to a point three hundred and fifty feet easterly from the highwater line or meadow bank of the westerly shore of Mullica river; Thence still along said exterior line, south-easterly as shown on the map hereto annexed fifteen hundred feet (1,500 Ft.) more or less to a point distant one hundred feet easterly from the high water line or meadow bank of the westerly shore of Mullica river at Goose-Cove Point; Thence still along said exterior, as shown on the map hereto annexed three hundred and fifty feet more or less to a point, one hundred feet easterly from the high water line or meadow bank of Mullica river at Goose-Cove Point; Thence still along said exterior line south easterly as shown on the map hereto annexed thirty-three hundred feet (3,300 Ft.) more or less to a point distant two hundred feet easterly from the high water line or meadow bank of the westerly shore of Mullica river at Oyster-bed Point; Thence still along said exterior line south westerly as shown on the map hereto annexed one thousand feet (1,000 Ft.) more or less to a point in line with the southerly line of lands of the said E. C. Sooy and Watson T. Sooy, extended easterly to said exterior line; thence westerly along said

southerly line of lands of E. C. Sooy and Watson T. Sooy extended five hundred feet to the high water line or meadow bank of the westerly shore of Mullica river or Great Bay ; thence generally in a north westerly and south westerly direction along the high water line or meadow bank of the west side of Mullica river to the place of beginning.

With the right and privilege under the covenants and conditions of this grant to appropriate the lands under water above described to exclusive private uses.

Provided, that the State of New Jersey, by its Riparian Commissioners, or any other lawful authority, may from time to time, change the exterior lines for solid filling and piers and fix the same further from the shore than formerly ; even though such action may affect the lands hereby granted, whenever the State may deem it necessary for its interest so to do ; and if such exterior lines shall be placed out further from the shore than formerly, then the party or parties claiming under this instrument may within such period as may be fixed by the State, either through said Riparian Commissioners or any other lawful authority have the exclusive right to apply for and receive a lease or grant of the additional land under water lying between the present exterior lines above described and the new exterior line or lines that may hereafter be fixed, upon payment of such additional rental or compensation, and upon such terms as shall be fixed by said Commissioners or other lawful authority under any present or future law of this State ; such additional land to be used for solid filling and for piers respectively as directed by the said Commissioners or their successors, or other lawful authority, under any present or future law of this State.

And also provided, that the State of New Jersey may grant or lease any of the lands of the State lying in front of the exterior line for solid filling or piers mentioned or referred to herein, for the cultivation of oysters or other fish, or for any other purpose whatever, provided that such grant or lease shall not operate to interfere with the reasonable use of and access by water to the lands under water hereby granted, and with the free and uninterrupted navigation between said lands under water and the main channel of the said Mullica river—

And also provided, that if the said E. C. Sooy and Watson T. Sooy, not the owner of the land adjoining the land under water hereby granted, then and in that event this instrument and conveyance, so far as the same binds the State, and all the covenants herein on the part of the State, shall be void as affecting any part

or parts of said land which joins land not owned by the said E. C. Sooy and Watson T. Sooy.

And also provided, that if the exterior line for solid filling and the exterior line for piers or either of said lines, now established, or lines that may be hereafter established by the Riparian Commissioners or other lawful authority of the State of New Jersey, shall be hereafter changed by the action of the authorities of the United States government, and the grantee herein or any party claiming hereunder shall offer damages, the claim or claims therefor must be made against the authorities of the United States government and not against the State of New Jersey.

Together with all and singular the hereditaments and appurtenances thereunto belonging.

To have and to hold all and singular the above granted and described lands under water and premises, subject to the terms, conditions and limitations aforesaid unto the said E. C. Sooy and Watson T. Sooy and to their heirs and assigns forever.

In witness whereof, the said Commissioners have hereunto respectively set their hands and these presents have been signed by the Governor, and the Great Seal of said State has been hereunto affixed and attested by the Secretary of State, this—25th—day of November—in the year nineteen hundred and three.

Signed,

FRANKLIN MURPHY,
WILLARD C. FISK,
WILLIAM CLOKE,
JOHN I. HOLT,

Witness,

JOHN C. PAYNE.

Attest,

S. D. DICKINSON,
Secretary of State.

NOTE: Part of printed lines one, all of 2 and 3, and lines 5 to 12 inclusive on 3rd page erased before executed.

Signed

JOHN C. PAYNE,

STATE OF NEW JERSEY, }
COUNTY OF HUDSON. } SS.

Be it remembered, That on this fourth day of December, nineteen hundred and three, before me the subscriber, a Master in Court of Chancery of New Jersey, personally appeared John C. Payne, who being by me duly sworn on his oath saith that he saw Franklin Murphy, Willard C. Fisk, William Cloke and John I. Holt, four of

the within named Commissioners sign and deliver the within deed as their voluntary act and that he, the said John C. Payne, thereupon subscribed his name as an attesting witness thereto.

Signed

JOHN C. PAYNE.

Sworn and subscribed before me at Jersey City the day and year aforesaid,

Signed,

JOHN W. HECK,

Master in Chancery of New Jersey.

WITNESS.—I have not the copy of the Gale grant. That grant was made to the Sooys in 1903, before the institution of the Oyster Commission, and the Gale grant was made in 1906, in August, and was recorded in September. I have no copy of the language of that grant ; I have seen it on the records of May's Landing Court House and the same erasures occur in the Sooy grant so that it is a similar deed exactly. And I also have a copy made from the map that is recorded with the Gale deed showing the extent of this grant, a space probably a mile long and an average of an acre wide—200 or 250 feet wide—along the Atlantic county side of the Mullica river.

CHAIRMAN WAKELEE.—Let that be marked too.

WITNESS.—I do not know that I have anything more to say to the Committee, unless some questions should be asked.

The Strickland grant in Mott's Creek is the usual grant ; it contains no restrictions and does not convey, under the Attorney-General's opinion, any right to keep the public from the other uses. Whether the White deed in Absecon Bay was ever granted or not I do not know, it has never been recorded at May's Landing at any rate, and whether the Parker grant was ever made, that is the first referred to as being made, I don't know, over in Great Bay. That was for planting ground, not natural propagating ground but planting ground, subject to lease under the act of 1875.

BY SENATOR WAKELEE.

Q. Your recommendation, I presume, would be that these grants should be made so that the purchaser could not interfere with the rights of fishery or oyster planting until he desired to dig it out or fill it in or make some practical use of his right? A. My thought is that the Oyster Commission of Atlantic county have no desire or inclination to retard the improvement, that the regular grant as stated in the deeds I could not object to as a citizen of New Jersey or an official—to fill in the meadows, or build docks for improve-

ments ; that could not materially interfere with the oyster rights anyway ; but in the Sooy grant in 1903 the area included has been said to be from 200 acres to 1,000 acres and our act authorizes the renting of the oyster lands, not these lands, because we cannot rent the natural propagating grounds at all, but the planting grounds we are authorized to rent at not less than one, nor more than three, dollars an acre. We do rent it at $2 an acre, and I believe have over 1,000 acres of that kind—(interrupted).

BY MR. DUFFIELD.

Q. What was the consideration of this deed of Sooys ? A. It was a thousand or twelve hundred dollars or fifteen hundred dollars ; the consideration of the Gale grant was $250.

Q. How much did that include ? A. Well, I cannot say; the map shows; I should say including—well a mile is twenty-five acres long and I should say at a guess that it is a couple of acres wide—fifty acres, $250. If it is the policy of the State to rent these lands they ought not to be rented at $2 or $3 an acre. Responsible people have told me they would pay a rental of $5,000 a year for Mott's Creek for twenty years, if that was the policy of the State, to rent these grounds. I don't approve of any such policy myself, but I am not the Legislature.

Q. Your view is they ought to be restricted—(interrupted.) A. For the use of the public.

Q. Taking the Gale grant, what do you think would have been a fair rental for the grant considering the use to which it might be put? A. That is a difficult question. I should think from my information obtained from persons familiar with that grant and its susceptibility to improvement and making big money out of it in the course of a few years by planting shells and raising oyster seed to sell—that is all it is good for, to raise seed for sale
lars an acre at least. I don't know how many acres there are in it, but there are probably twenty-five or fifty acres, more or less. I don't know.

Q. That entire grant I understand was made for a consideration of— A. $250.

Q. $250 ? A. Yes, sir ; the Gale grant. The Sooy grant is about four miles long, and I don't know how wide ; the map shows. I could not say, but some people say there are a thousand acres in it, but I don't believe so ; the map doesn't look so.

Q. What is that land useful for ? A. Was it used for ?

Q. What is it useful for ; what could you use it for in oystering ? A. It is a natural propagating ground and it is located in the river

where natural oysters grow and where shells could be planted and its use increased to an unlimited extent.

If not out of order I want to say right here while I think of it, it may not be pertinent to this but it is right in line with the thought the Attorney-General is expressing, I believe if $5,000 had been spent in planting oyster shells this year on that ground, it would have been worth to the State, in view of what has happened since, $500,000 inside of five years. I think that is susceptible of proof.

Q. What uses are the Messrs. Sooy putting this land to now? A. I understand they are planting oysters and using it as a natural propagating grounds to raise seed oysters to sell.

Q. Without regard to what profits the State might have made had it planted oysters there, what, in your opinion, would be the value of that land for the purposes to which it is now being put by the Messrs. Sooy? What do you think would be a fair price for the State to receive for it?

SENATOR WAKELEE.—The purchase of the fee?

MR. DUFFIELD.—The purchase of the fee.

WITNESS.—That is the fee, to purchase it?

Q. Yes. A. Well, as I have said before, I have heard the oyster men, a great many of them, and men of means and capable, who declare that if they could get that much ground in Mullica river in perpetuity, that it would be worth five or ten thousand dollars a year rental. Of course they would have to plant oysters; they would have to spend some money and improve the property in order to get the revenue from it.

BY ASSEMBLYMAN BARBER.

Q. And in order to obtain a revenue what expenditure would be necessary; what capital would be required? A. Well, that I could not say. As I did say, I believe that $5,000 expended in planting oysters during the summer months of this year would have produced $500,000 in five years, if that is an indication of the thought you have in mind. You can plant shells there for about ten cents a bushel and if the shells are planted and the oysters form and there comes a growth as there did this year, when everything above the bottom was covered with oysters, there is no limit to the increase in the value of the property so improved. This property, however, —well, I am told by some, that there are natural beds, hard shell beds located on this ground; it has always been, the oyster men inform me, valuable ground where they went and caught oysters and made ten or fifteen dollars a day for a few days at the beginning of the season catching oysters to take away and sell, to take away to other localities and plant, to ship away. These little oys-

ters, the spawn comes during the last of June and during July and sometime in August, and if there is something there for them to catch to, they catch and they grow and in six weeks they will be probably as big, some of them, as a nickel or a quarter and so on up, and they grow very rapidly although they are very thick; they are taken away and re-planted and cultivated in other localities and become valuable in that way. The men oystering there on the natural beds immediately adjacent to this land, this year, the first of the season, during the month of September, the Oyster Commission of Atlantic county issued 246 licenses to tongers and the first few days of the season they made all the way from ten to thirty dollars a day catching these oysters at 20 and 25 cents a bushel for planting purposes. Of course, this depends on the ability of a man, how much he makes, but they make anywhere from ten to twenty-five dollars a day the first week of the season, men who take out these licenses to tong those oysters.

Q. Have the Sooys increased the production since they had the land? A. I cannot answer that question; I think they have. I understand they have been dredging and putting sand on the soft places to make them hard and planting shells, and if they have done that they have increased the production for their own benefit.

Q. Your opinion is, that should be done by the State? A. My opinion is it should be done by the State and if it is the policy of the State to sell these lands let them say so and advertise them and put them up to the highest bidder and they will get a great deal of money for them. But I do not approve of that kind of business; I think the people of the shore counties, the thousands interested in this industry and who make their living from it largely, should continue to have that privilege; if it is taken away from them they will have to go back in the woods and cut charcoal wood and they will starve in doing it before the woods grow up big enough, even to make charcoal, for it is all cut off.

MR. DUFFIELD.—Is there anything else you think of that will be of interest to the Committee?

WITNESS.—I don't know that there is. I will tell the Committee all that I know, but that won't take long, because I don't know much about it.

(Witness then withdrew.)

MR. DUFFIELD:—It has been suggested that a statement I made, perhaps without due consideration, has given a wrong impression, and that was with regard to the examination we made of these old

legislative grants. I do not wish to be understood as saying that the legislative grants for example in the Guffy grant, which is in litigation, or the Morris Canal grant, or the grant in the Goetschius case or any of the well known grants which are of doubtful validity were determined to be valid, but I merely meant to say that in the examination of the old legislative grants we found nothing that we thought would be of any benefit to the State to raise any contention over now.

CHAIRMAN WAKELEE.—That is the way the Committee understood you.

MR. DUFFIELD.—Yes, I did not mean to be understood as confirming the validity of any of those unsettled grants, but merely to say that we found no other grants that we thought were of sufficient importance to question the validity of.

To return to the testimony of Mr. Albertson. I want to call the attention of the Committee to the singularity of this testimony taken in connection with the opinion of the Attorney-General. I want to say frankly that the opinion is one of which I knew nothing, and in fact I did not know that Mr. Albertson was to be here to testify, but I do call the attention of the Committee to the fact that this case of Heselton against Beekman, which the Attorney-General refers to determines that a grant containing the clause, "With the right under the covenants and conditions of this grant to exclude the tide water from so much of the lands above described as are under tide water, by filling in or otherwise improving the same, and to appropriate the land under water above described to his exclusive private uses"—that is the language contained in the grant then under consideration, and the decision was, that grant was limited to the privilege contained in that clause, and therefore, until the grantee had exercised the right by reclamation and filling in and devoting the property to his private use he had not any right superior to the public right of fishery. Now, that particular clause was struck out from the deed given to the Messrs. Sooy as you will see in the copy which has been produced here; the ordinary printed form provided by the Commission was used with the exception of the fact that they struck out the very clause which had been previously construed to require that the grantee should make these improvements by filling in before he could exclude the public from the right of fishery. Singularly enough Mr. Sooy, who was the grantee in that deed, happens to be here today on another matter and I understand desires to make his statement to the commission, and the commission would be glad to hear him, I presume.

SENATOR WAKELEE.—Yes; he may be sworn.

WATSON C. SOOY sworn. Examined by Mr. Duffield.

Q. Where do you reside? A. I am living at Mt. Holly now.

Q. You hold what official position? A. County Clerk of Burlington county.

Q. You were the grantee in a deed made by the Riparian Commissioners to you and E. C. Sooy? A. Yes, sir.

Q. What relation is E. C. Sooy to you? A. Cousin.

Q. Will you tell the Committee the purpose you had in procuring this grant? Did you own the upland adjoining this riparian grant? A. We did.

Q. How extensive a holding have you there? A. We have a great deal of meadows there; I think we paid at least $5,000 for the meadows we own there. A part of those meadows was not even taxed; it was land that was not of any account whatever but was owned by so many different parties that in one case we were obliged to take it to court in order to get title to the land and it made the land cost us a great deal.

BY SENATOR WAKELEE.

Q. When you speak of the meadows do you mean the upland? A. I mean the meadows; it is salt meadows, hundreds of acres there.

Q. Was it the ownership of the meadows on which you based your right to the riparian grant? A. Yes, sir.

BY MR. DUFFIELD.

Q. Did you have any ownership at all in the main land itself? A. The main land is at least five miles off.

BY SENATOR WAKELEE.

Q. You did not own any of that? A. We did not own any of the main land.

BY MR. DUFFIELD.

Q. This main land is five miles from your holdings and you owned some meadows? A. Yes, sir. I said five miles; it is a hard matter to tell about that, possibly three miles would come closer to it.

Q. What was your purpose in securing this riparian land? A. To plant shells for the purpose of propagating oysters.

Q. I suppose that you bought this meadow land for the purpose of securing the riparian rights? A. We bought the meadow land for the purpose of digging canals through. On all the banks of these rivers there are long points and we dug canals through and planted oysters in there, planted shells I should say.

Q. So that on the so-called upland, as far as you are concerned, you are actually engaged in propagating oysters? A. Yes, sir.

BY SENATOR WAKELEE.

Q. What is the character of these meadows, does the tide ebb and flow over them? A. No, sir; they are high meadows where you can drive on with teams and cart off the hay, unless there is thoroughfar or something in the way and, of course, that you have to bridge or put it in scows.

BY MR. DUFFIELD.

Q. Who made this application, you or your cousin? A. Both of us together.

Q. I notice this deed or grant which was given to you had a certain clause stricken out of it; was that done at your suggestion or at your request? A. It was done at my request because I did not want to build any docks or wharves or piers.

Q. You wanted to use it for— A. I wanted to use it for oyster purposes, and that's what I bought it for, and that's what I said I wanted it for when I bought it.

Q. Did you, in your application, state to the Commission the price that you were willing to pay for it? A. I did not; I don't remember just what—I don't think I stated to the Commission the price I was willing to pay for it.

Q. They fixed the price, didn't they? A. I think they fixed the price.

Q. What price did they fix? A. I think it was $1,000; is not that stated in there (referring to copy of the Sooy grant produced by the witness, Albertson, and which appears in full on the record)?

Q. Was there any negotiation over the matter; did you appear before the Commissioners? A. I appeared before them and made the application.

Q. Did they fix the price then and there? A. They fixed the price then and there; yes, sir. I think I told them that the price under which the Atlantic County Commission were then working—I think I told them the price they were leasing land for at that time.

Q. Had you, prior to that time, applied to the Atlantic County Commission for a lease? A. The Atlantic County Commission was not in force, the Ocean county was.

Q. That was before the jurisdiction of the Atlantic County Commission was established? A. Yes, sir.

Q. And your lease was then made for the consideration you have mentioned? A. Yes.

Something has been said about the number of acres in there and I would like to say that it has been surveyed.

Q. I should be glad to have you speak of that. A. There are

nearly one hundred acres in the survey and about forty acres of that—I think about forty acres, or thirty sure—is mud bottom that is good for nothing until it is improved ; as Mr. Albertson stated we have to put sand on, and we are trying to make a bottom there ; it was of no use before. This ground was all practically here ; sometimes the oyster men, in culling off their shells would drop shells and shells would come there from other places and wherever the shells would drop oysters would grow. There are hundred of acres in the Mullica river ; enough to produce seed for the whole State of New Jersey if it was sowed. Connecticut sells all her ground ; the Commission is self-supporting and every foot of ground is sold in Connecticut. I would like to say that we have spent about $25,000 in improving this land ; we have put down over forty thousand bushel of shells ; we have paid the oyster men in that district more than they would have made in ten years, oystering on this ground ; we have paid it to the oyster men right there, because we wanted to give it to them, to bring shells.

I did not prepare any statement because I did not know I was coming here on this business ; I just happened here on other business, as Mr. Duffield knows.

Q. Is there any suggestion which you have to make, Mr. Sooy, in regard to the manner of leasing this oyster land or riparian land? A. I think these oyster propagating lands should be leased, or sold ; I think it would be better if they were sold, for the reason, if you sell a farm to a man he will improve it ; if you lease a man a farm he will get all he can out of it and then go to some other place. As Connecticut has proved the fact, I think it is better to sell the land, by riparian grant or in some other way. Another thing I would like to say, when you come to figure up the price we paid for this, count the mud bottom and then look over in Ocean county where they are renting their ground for fifty cents an acre ; certain lands there that are natural seed beds that some of the oldest inhabitants would tell you they have gathered oysters on, natural seed bottom, they are renting that for fifty cents an acre, and I, and many others, would be glad to pay $50 an acre for it.

BY SENATOR WAKELEE.

Q. Have you any notion of why that has been done? A. Simply because they made a fee of fifty cents an acre for the Commission, as I understand it. If I am wrongly informed I am willing to be corrected ; I do not live in Ocean county but that is what I am informed, that they have rented it at fifty cents an acre, and make that the general fee for leasing.

There are a whole lot of things I can't think of just now; if I had prepared a statement it might have been better.

MR. DUFFIELD.—That is all, I think.

THE WITNESS.—I read in the record that Mr. Horner, the superintendent of the Oyster Commission said he would be willing to pay $2,000 for our grant; with the money we have spent on it, I should think he would.

Q. Do you think you paid all that the land was worth? A. At the time we bought it I do; yes, sir. I want to say—I said it before—that is not all the propagating ground there is in the Mullica river, there are hundreds of acres there, the whole river should be sowed, the channel and all, the channel will raise just as good seed as the other. We have only a strip alongside the land we own. Of course it runs out to low water mark, in some places three hundred feet.

Q. How far does it go out? A. Well, I would rather trust the lease than trust to my memory.

MR. DUFFIELD:—(Reading from the Sooy grant)"All that parcel of land flooded by the tide waters situated in the township of Galloway in the County of Atlantic and State of New Jersey described as follows: Beginning at a point in the highwater line or meadow bank of southerly shore of Mullica river, &c. and from thence due north three hundred feet to the exterior line," &c. "Thence northeasterly along said exterior line as shown on the map hereto annexed three thousand feet more or less to a point one hundred feet northwesterly from the high water line or meadow bank of the southerly shore of Mullica river," then along the exterior line seven hundred feet more or less to a point and thence still along the exterior line twelve hundred and fifty feet more or less to a point distant four hundred feet easterly from the high water line, thence still along the exterior line in a southerly direction twelve hundred and fifty feet—apparently it is out to the exterior line of solid filling.

JOHN C. PAYNE recalled. Examined by Mr. Duffield.

Q. I call your attention to the grants made by the State to the Messrs. Sooy of certain oyster land in the Mullica river. Have you any recollection of the circumstances connected with that grant? A. No particular recollection, Mr. Attorney-General, except that I remember the application having been passed upon by the Commission and the regular procedure having been gone through with.

Q. In listening to the testimony of Mr. Sooy it struck me, as I think it struck the Committee, as somewhat doubtful, whether

meadow land lying out in the middle of the marshes is upland, within the meaning of the statute. I presume no attempt was made to give notice to the owners of the upland at the further end of the meadows in this case? A. I remember distinctly there was no question of the facts of the applicant being the riparian owner for the purpose of receiving that grant. He was the owner of the upland in the sense that the Riparian Commission considered the upland. The meadow was above tide water and was of the same character as thousands of acres of meadows along these waters, and the owner of the higher ground three miles away had no relation to and no rights connected with this meadow land.

Q. This meadow land was above tide water? A. Yes; it was above tide water.

Q. I rather got the impression from Mr. Sooy's statement that it was simply marsh land. A. Oh, no; I think Mr. Sooy's statement was that they drove all over it and it was high meadow land.

Q. Perhaps I misunderstood him. A. Excepting where interrupted by a thoroughfare.

Q. Do you recall the reason or purpose of striking out this clause from the usual grant, requiring solid filling? A. My understanding of the erasion of some word in that printed form was that it was done to cover the decision in the Beekman case. The Commission desired to make a grant that conveyed all the rights of the State in the land under water and gave the grantee all lawful use of the land under water.

Q. The purpose was then to exclude the public from the right of fishery over the part covered by this lease? A. Not if the public had the lawful right of fishery. I think it is very clear the Commission desired to give the grantee all lawful rights to the use of that land under water, and I am very sure it was in the mind of, and was expressed by the Commission, that if the law already gave anyone else any right to this land under water this grant did not interfere with that. I think they had that in their minds.

Q. You are more familiar with this subject than I am but as I understand this Beekman case held that a grant which required certain things to be done limited the exercise of the privileges to that use and that the grantee could not thereafter exclude the public from the fishery rights or the rights of fishery, until he had utilized his grant for the purpose for which it was made. That was the Beekman case, was it not? A. I think it was, and I think it was in the minds of the Commissioners as a rather narrow construction of what they intended to do. But I think the reason of the erasure of those

words in the Sooy grant was to cover that deficiency, if I may call it so, in that Beekman case.

Q. The public would undoubtedly have the right of fishery there as long as the title remained in the State? A. Under the Beekman case I think that was so.

Q. After this grant was made the public would be excluded from that portion covered by the grant, would it not? A. That is a legal question which I would not care to address myself to, Mr. Attorney-General.

MR. DUFFIELD.—We have representatives here from the various Boards of Trade who desire to give their views to the Commission as to what legislation should be had on this subject.

SENATOR WAKELEE.—We should be very glad to hear them.

PETER BONNET sworn.

MR. DUFFIELD.—I will state to the Commission that this gentleman is the comptroller of the city of Elizabeth and appears here at the city's request as I understand it.

MR. BONNET.—Mr. Chairman and gentlemen of the Committee. I have here the resolution passed by the Elizabeth Board of Trade after quite a careful consideration of the subject of granting riparian leases, brought to their attention by a communication from the Attorney-General, suggesting that there were contemplated some changes, and understanding that the principal point of the contemplated change was in the line indicated in bills which from time to time have been presented to the Legislature, one of which was presented at the last session, and perhaps had some bearing upon the appointment of the Commission—that is the bill introduced by Senator Minturn to the effect that hereafter no riparian lands of the State of New Jersey should be sold in fee, but that grants should be made simply for a term of twenty-five years. It is upon that point particularly that we feel we have something to lay before your Commission and with your permission I will read a portion of the resolution that was passed by the Elizabeth Board of Trade:

Resolved, that the Board of Trade of the City of Elizabeth is opposed to any change or modification in the present method of disposing by grant or lease, of the riparian lands of the State, and that they are also opposed to the State charging unreasonable prices for its unsold riparian lands.

In reference to the question of refusing hereafter to make grants in fee, and substituting therefor a lease for twenty-five years for

the utilizing of the land under the waters of the State, I would say that it is our view and opinion that, under that plan the revenues of the State from the vast majority of its ungranted lands at the present day, would absolutely cease. There may be a few localities, a few favored spots, where, under such a condition as that, no private owner willing to take them, no capitalist daring to invest in them, you might introduce a bill and have, as has been done by public authorities, the State purchase the adjacent upland, the land which furnishes access, and then invest a large sum in building the extensive works of reclamation and dockage that would be required, and then you would have something that could be leased ; but you could only lease it to a very unimportant class of people, to people whose improvements would be an ephemeral character and the return from such a form of leasing in any part of the State of New Jersey with a very few exceptions—perhaps on the Hudson river—would be entirely without satisfactory result. I say that confidently, because I am familiar, by my connection with shore owners, in a section of the State of New Jersey which lately has done as much for the growth and development of the State as any part of it, that is that section around Elizabeth that we are intimately connected with, the Passaic and Hackensack rivers, the Newark bay frontages, the frontage on Arthur Kill or Staten Island Sound and the Raritan river—I am familiar with the fact, for there, gentlemen, we have developed in the last fifteen or twenty years, some grand manufacturing industries, and located some of the largest manufactories in the country. We have factories there of quite recent location, the output of which we commonly refer to as a concern doing a business of ten million dollars a year—a fifty-million-dollar-a-year business. That is the class of people that we have located in that neighborhood. Now, gentlemen, in order to locate a factory of this class—and I may say that I have personally had much to do with that class of business, both in dealing in and disposing of riparian lands,—to locate a factory of the class I speak of, and those which have built up that part of New Jersey, there are three requisites. In the first place there must be a suitable area of land sufficient for the works; sufficient for the work they are to do now and for prospective development. Then there must be suitable land access; there must be highways; there must be railroad tracks and switches carried down to the works; the party must have the ability to communicate with the main land, to procure its labor. Then when the shore owner has spent his time and ability in fitting his land for that development he comes up against the State of New Jersey and its demands

for a valueless strip of land lying under the water between the shore and the channel; then he is up against the Riparian Commission and the taxes which the State of New Jersey puts upon development in that section. We do the best we can, we make the best bargains we can, but if you change the law so that we cannot get a grant, even though we pay an exorbitant price for it, you will drive that class of improvement to other states where they can obtain absolute grants.

You cannot get people to create the business of the class I speak of and put capital in that place and then be limited to a temporary twenty-five year lease for that little thing held by the State which is a component part of, and necessary for, the development of that business. We have had this question, again and again before the various legislatures which have met here and the moment when bills just touching that one point have been introduced, when those bills have been examined and the facts connected with that matter have been developed, those bills have never seen daylight again.

While I am discharging my duty in regard to presenting as briefly as I can our views in regard to the first point, the question of any change in making grants, there is another point covered by this resolution, and that is the one that refers to what we consider at the present time the exorbitant charges of the Commission for the privilege of improving our lands. After we have done all that I have mentioned to you in fitting these lands for development and obtaining people who are willing to come to us and carry out that development, then the price that we have to pay to the State to complete this transaction, so as to make it available, arises. I would say from my own personal experience in this matter that we have had great and rapid changes. After the original act was passed and Hudson county was put under its control, steps were taken to extend, not the exclusive right of the Riparian Commissioners to the remainder of the State, but simply a permissible right to make grants outside of the jurisdiction of the original bill. At the time that proposition was before the Legislature, somewhere along in 1871 and 1874—I believe there were two acts, I do not recall which one it was, there was a feeling of opposition in the rest of the State to having this jurisdiction of the Riparian Commissioners extended beyond Hudson county although it was only permissory and left the old wharf acts rights intact. At that time I had occasion,in the City of Trenton, to come into conference with Mr. Francis Lathrop, the chairman of the Riparian Commission of those days, add with Mr. Robert Gilchrist, the Attorney-General, in discussing the whole of this subject, and the question of what the intent and policy of the State was, and I re-

ceived assurance at that time from those gentlemen that all they desired was to protect the various interests involved and to foster the commercial development of the State, and they made assurances at that time that property owners in the sections I have mentioned, the Passaic river, the Hackensack river, Newark bay and Staten Island Sound, would not be charged more than it cost the owner then to go before the Board of Freeholders and obtain a license. That policy was carried out for a number of years. I personally went, after the passage of the act I speak of, before the Commission and obtained grants for $2 a foot on Staten Island Sound. Other people obtained large grants in the same section at the same rate, grants where the property is now developed. The situation, therefore, in that neighborhood, gentlemen, is one that I think a great many people do not appreciate. The lands there, whether they belong to the private individual or whether the State has an interest in them, would be valueless without other forces brought to bear than those which are either under the control of the property owners or under the present policy of the State. That is to say, if left to themselves they would be almost valueless. The channel would continue to grow worse and worse and be clogged and changed until no access could be obtained to that land. The result of it is that we have been forced to exert continued efforts and endeavor to secure the aid of the federal government. In an organized manner we have been at work on this subject and during the last twenty years we have obtained for the improvement of Staten Island Sound, from the federal government, over a million dollars; that means a direct donation from the federal treasury of more than fifteen dollars a foot for every foot of more frontage, and without which neither the State of New Jersey could get a dollar nor could we get a cent for our land for the improvements that I have described. But we do all these things, and when we work this value up and when we approach the State's representatives we are continually advanced in charges or taxes upon this development, step by step to an extent that has at last become unbearable. The price was advanced on Staten Island Sound from $2.00 a foot to $5.00 a foot, from $5.00 to $10.00 a foot, from $10.00 to $15.00, and now it is up to $40.00 a foot, and the State of New Jersey has never done anything to warrant this increase in price, but by reason of having this policy in effect has prevented the dealing in and the improvement and organization necessary to properly bring these lands into the market. It is of vital necessity that these lands should be marketed. We have not come

before the State of New Jersey, ever, and asked or received any bounty. We have fought for channel improvement unaided, and in spite of everything we have done we have had this enormous riparian tax. If the State of New Jersey has ever assisted us by the expenditure of money as the federal government has done, we might not feel so badly about it, but today it has reached a point in regard to its charges that they have become prohibitive. I can readily understand the position of any one who represents the state of New Jersey in connection with this subject and in the light of the public criticism that they are constantly subjected to, that they would be chary about granting anything belonging to the State unless they got all they possibly could out of it. I think that is one of the troubles of the entire situation. The whole policy of the State in attempting to derive revenue from this land, that they give us nothing for in return, is, I think, very defective, and it is on that ground and on the consideration of the question of leasing that I feel that in presenting, as briefly as possible, these facts, I have discharged my duty to the Board of Trade of Elizabeth, touching the two points of its resolution.

SENATOR MINTURN.—We are very much obliged to you, Mr. Bonnet, for your discussion.

Is there anyone else present who desires to be heard ?

MR. HENRY H. ISHAM, of Elizabeth, N. J.

Mr. Chairman.—I am interested in riparian land but when I came down here I expected that the hearing would be somewhat earlier ; now I have to go back, and if the Committee is going to sit again I would like to have the privilege of coming before you at some future time.

SENATOR WAKELEE.—Whom do you represent ?

MR. ISHAM.—I came here as Mr. Bonnet did as a committee from the Board of Trade of Elizabeth.

SENATOR WAKELEE.—I am inclined to think that when we adjourn today it will be to no fixed time ; we have about finished the testimony that we have in mind and will probably adjourn subject to the call of the chair.

MR. ISHAM.—If the chair please, I only wanted to inquire whether you expected to continue the hearing ; if you do not I would simply say I have nothing to add to what Mr. Bonnet has said ; but there is a phase of the case which, if you were going to continue your hearing, I should be very glad to bring before you.

SENATOR WAKELEE.—We have concluded to-day, I think,

everything we have in mind ; we may take up some other matters. I suggest you leave your name with the clerk of the Committee or the Sergeant-at-Arms,—

MR. ISHAM.—H. H. Isham of Elizabeth, N. J.

SENATOR WAKELEE.—And you will be notified.

MR. DUFFIELD.—I understood that there were representatives here from the Board of Trade of the City of Hoboken but they do not seem to be present now. If there is no other representative present from the various Boards of Trade who desire to be heard I will say to the Committee, in the light of the Chairman's suggestion, that we have practically completed all the evidence today that we have to submit to the Committee.

MR. ISHAM.—Perhaps, if the Chairman will permit me, I had better proceed now.

HENRY H. ISHAM sworn.

SENATOR WAKELEE.—Have you a statement you desire to make to the Committee, if so, we should be glad to hear from you.

MR. ISHAM.—What I want particularly to do is to endorse what Mr. Bonnet has said and to say that he has practically devoted his life to this question, as you can see from what he says.

I am not a riparian owner in the sense that I am an applicant to the Board or probably will be ; I have made an application and have obtained on Newark bay, grants for perhaps twenty-five hundred or three thousand feet, and I have held it for some time, and am likely to, for development, although I have been continually making an effort to get some concerns that are large enough to come in and advance the money and be able to take the property after it is improved.

The policy of the State of New Jersey should be to have its lands improved and they cannot be improved until large concerns, that have the capital, want them enough to improve them, and, in going before the Riparian Board at Jersey City when that very, in my my mind, estimable man, and a man of profound judgment, Amzi Dodd, said to me that he had always maintained that the policy of the State should be not to charge anything for this land but to encourage the development of it on the ground that it then became a permanent investment for tax purposes for the State and the State would reap tenfold more by encouraging that development than it would ever get by being a land speculator and locking it up so that the improvements would not be made ; and as Mr. Bonnet has said the disposition to keep crowding up these prices has driven over to New York, where there is no charge made for land, many

enterprises, clear out to Jamaica Bay, where they can get that land for nothing, driven away the very improvements that ought to have come to the Jersey shore, and the policy of the State to make grants, should be continued. These improvements never will be made unless the man making the improvements feels that he is going to get a title by which he can sell those improvements if it ever becomes necessary, and it cannot be undertaken by anybody excepting those of large means. I think it would be purely suicidal if you are going te lease State lands under water to make the leases for any short terms. If the leases are made at all it should be with the right of renewal at a fair consideration. I think it behooves the State of New Jersey and this Committee to recognize and remember that the rights of riparian owners have been recognized all the way through and it was at one time considered by the local common law that they had rights which were afterwards taken away from them. I intended at one time to test this whole question in the United States Court, but was dissuaded by Judge Lathrop.

I want to simply reiterate the fact that I think the law of the State is all right as it is, unless it be that there may be some lack of uniformity in prices, and that of course could be arranged and fixed by a very simple method.

BY MR. DUFFIELD.

Q. How would you suggest that should be done? A. I think it is within the power of the Commission to have an examination made of the riparian land and determine as they do—they always determined the price of that land—but having determined it, and it should be so low and reasonable that a man would take it and improve it; then if you choose to change those prices I don't think the changes should be more than the addition of interest to the principal amount. If I take a grant today and pay $5 the man who takes a similar grant ten years from today should pay $5 and ten years' interest, because I have carried that land, of course hoping to develop it, as I have my own. You can't regulate the development of those things; they come when you find a customer big enough to handle the enterprise, but I think a system of that kind in fixing prices of riparian lands could be very easily arranged. As it is now, the rate here one year according to the records has been $5, and the next year, right next to it, it has been $10. Of course that shows that something is either irregular or wrong, or something else, whatever way you are a mind to put it. But I think it is very simple to have a fixed rate and as time goes on simply add whatever the interest may be to it.

MR. DUFFIELD.—Mr. Cloke has a matter which he would like to have placed on record before we adjourn.

WILLIAM CLOKE recalled.

I received a letter this morning; it was handed to me, and I think it would be well to have it read before the Committee and I will just read those parts of it which I think are pertinent.

"The grants attached by the superintendent of the Ocean County Oyster Commission cover ground that has been deemed so worthless by the owners and the local taxing officers that little, and in many cases no tax has ever been paid. Two of the grants made in Galloway township bring into the State about thirteen hundred dollars. Somewhat of a difference between this and nothing.

"At a very conservative estimate these grants will increase in the next five years one-third in value to the local taxing district and after that time the ratio of increase will be much larger.

"The two hundred injured oyster men mentioned by Mr. Horner have received more money from this land by selling shells to owners of the same than they ever made off this same property by oysters.

"The Oyster Commission under its present system is now leasing land to applicants for the exclusive purpose of oystering at the rate of fifty cents per acre. This land if granted by the Riparian Commission would net the State at least $20.00 per acre, and the increase in the ratables of the taxing district would equal the yearly rental now received and in a very few years far exceed it. At the same time the State would have the principal paid for the grants.

"Under the present system the outlay of the Oyster Commission far exceeds its revenue and the expense of conducting the same is a direct charge upon the taxpayers.

"The seaboard counties have thousands of acres outside of natural oyster beds which, if turned over as riparian grants would bring into the State hundreds of thousand of dollars and at the same time place a taxable value on worthless land that would be far in excess of the best farms. By worthless land I mean land which in its present state is non-productive as it is not natural oyster beds and will only grow oysters after preparing the bottom at considerable expense."

That is all that seems pertinent to the situation and I thought it might be well to get that in. The gentleman who writes this is J.

A. Gale of New Gretna, New Jersey, who seems to be well informed on the subject.

MR. DUFFIELD.—He is probably the gentleman to whom the grant was made that has been referred to.

MR. CLOKE.—Yes ; I think so.

MR. DUFFIELD.—Is there anything further you desire to say?

MR. CLOKE.—No, I think not.

MR. DUFFIELD.—There is nothing further that we desire to bring before the Committee today but certain lines of investigation have presented themselves which may or may not lead to results; if they do it may be profitable for the Committee to hold further sessions but if they do not it is probable that such further sessions will be unnecessary, for the purpose of taking testimony, at any rate, and I therefore submit, if it leads to the approval of the committee, that when we adjourn today we adjourn to meet at the call of the chair.

CHAIRMAN WAKELEE.—Yes, that will be done.

The letter produced by Mr. Cloke had better go in evidence.

(The letter referred to is as follows.)

New Gretna, N. J.,
Oct. 24th, 1906.

WILLIAM CLOKE, ESQ.,
Member of the Riparian Commission.

Dear Sir —

I notice in the Philadelphia Record of the Twentieth inst., an article concerning an investigation to be held on Friday of this week of certain grants made by your Board. As I am interested in one of these and have received no invitation to be present, I take this means of presenting my views.

The grants attacked by the Superintendent of the Ocean County Oyster Commission cover ground that has been deemed so worthless by the owners and the local taxing officers that little and in many cases no tax has ever been paid. Two of the grants made in Galloway township brought in to the State about $1,300. Somewhat of a difference between this and nothing.

At a very conservative estimate these grants will increase in the next five years one-third of the local taxing district and after that time the ratio of increase will be much larger.

The 200 injured oystermen mentioned by Mr. Horner have received more money from this land by selling shells to the owners of the same than they ever made off this same property by oystering.

The Oyster Commission under its present system is now leasing lands to applicants for the exclusive purpose of oystering at the rate of fifty cents per acre. This land if granted by the Riparian Commission would net the State at least $20 per acre and the increase in the ratables of the taxing district would equal the yearly rental now received and in a very few years far exceed it. At the same time the State would have the principal paid for the grant.

Under the present system the outlay of the Oyster Commission far exceeds its revenue and the expense of conducting the same is a direct charge upon the taxpayers.

The seaboard counties have thousands of acres, outside of natural oyster beds, which, if turned over as riparian grants would bring in to the State hundreds of thousands of dollars and at the same time place a taxable value on worthless land that would be far in excess of the best farms. By worthless land I mean land which in its present state is a nonproducer as it is not natural oyster beds and will only grow oysters after preparing the bottom at considerable expense.

I am informed that many argue that this plan would place the man with a small capital at a disadvantage but as I understand the regulations of your Board this is an error.

First. You do not have jurisdiction over land that is an actual oyster producing bed.

Second. The riparian owner must be the owner of the fast land.

I would be pleased to answer any questions the Board care to ask.

Yours truly,
(Signed) J. A. Gale.

The Committee then adjourned to meet at the call of the chair.

The following is a copy of the information filed by Attorney-General Stockton against the heirs of Annett, and the brief of Mr. George L. Record, on motion to dismiss the information referred to in the preceding testimony and offered as exhibit therein:

IN CHANCERY OF NEW JERSEY.

Between JOHN P. STOCKTON, Attorney-General, Informant, and JAMES REYNOLDS, MARY REYNOLDS, JAMES ANNETT, ALEXANDER ANNETT, CATHERINE BURDETT, ROBERT ANNETT, HANNAH HAWES, GEORGE W. ANNETT, JOHN P. ANNETT, EMILY A. HUBER, CHARLES HUBER, STEPHEN ANNETT, CATHERINE TAILLANT, ROBERT A. ANNETT, GEORGE W. ANNETT, MATHILDA ANNETT, ANNIE ANNETT, WASHINGTON HAWES, JOHN F. BURDETT, Defendants.	Information, &c.

To the Hon. Alexander T. McGill, Chancellor:

Informing shows to your Honor John P. Stockton, Attorney-General of the State of New Jersey, for and on behalf of said State, and at and by the relation of Leon Abbett, governor, Richard N. Herring, Miles Ross, Richard B. Reading and Willard C. Fisk, comprising the Board of Riparian Commissioners, also for and on behalf of the State of New Jersey,

That the State of New Jersey was on the eighteenth day of April, 1874, seized in fee simple and lawfully entitled as owner to certain lands situate in the townships of Ridgefield and Englewood in the County of Bergen and State of New Jersey, lying under the waters

of the Hudson river, and described in a certain agreement in writing between the State of New Jersey and Mary Reynolds, wife of James Reynolds; James Annett, Alexander Annett, Catharine Burdett, Robert Annett, Hannah Hawes, George W. Annett, John P. Annett, Emily A. Huber, Stephen Annett, Catharine Taillant, Robert A. Annett, George W. Annett, Mathilda Annett, Annie Annett, Washington Hawes, John F. Burdett, George H. Taillant, made on the eighteenth day of April, eight hundred and seventy-four, and hereinafter fully set forth;

That the aforesaid Commissioners were appointed by the governor, pursuant to an act entitled "An Act to ascertain the rights of the State and of riparian owners in the lands lying under the waters of the bay of New York and elsewhere in this State," approved April 11th, 1864, and the several supplements thereto.

That the third section of the supplement to said act, approved March 31st, 1869, provides that without the grant or permission of said commissioners, no person or corporation shall fill in, build upon, or making any erection on, or reclaim any of the land under the tidal waters of this state in the bay of New York, Hudson river or Kill von Kull, and in case any person or corporation so offending shall be guilty of a purpresture, which shall be abated at the cost or expense of such person or corporation on application of the Attorney-General, under the decree of the Court of Chancery, or by indictment in the county in which the same may be, and by the twelfth section of the same supplement it is further provided that "the said commissioners may commence proceedings in the name of the state of New Jersey by ejectment, or otherwise, against persons or corporations trespassing upon or occupying the lands of the state under water, or which were heretofore under water, and the Attorney-General of the state is hereby required to commence and prosecute such actions as may be instituted or directed by the said commission."

That on or about the eighteenth day of April, 1874, the state of New Jersey by its riparian commissioners, the Governor concurring, did make and execute to and with Mary Reynolds, wife of James Reynolds, James Annett, Alexander Annett, Catharine Burdett, Robert Annett, Hannah Hawes, George W. Annett, John P. Annett, Emily A. Huber, Stephen Annett, Catharine Taillant, Robert A. Annett, George W. Annett, Mathilda Annett, Annie Annett, Washington Hawes, John F. Burdett, George H. Taillant, a certain agreement in writing, which agreement was also duly executed by the said Hannah Hawes, Washington Hawes, Robert Annett, George W. Annett, G. H. Taillant, Catharine Taillant, John F. Burdett, Cathar-

ine Burdett, Stephen Annett, Emily Huber, Alexander Annett, and Mrs. J. Reynolds, under their respective hands and seals and is in the following words, to wit:

THE STATE OF NEW JERSEY.

To all to whom these Presents shall come, Greeting:

Whereas, pursuant to an Act of the Legislature of said State, approved March 31st, 1869, entitled "Supplement to an act entitled 'An Act to ascertain the rights of the State and of riparian owners in the lands lying under the waters of the Bay of New York and elsewhere in this State,' approved April eleventh, eighteen hundred and sixty-four," and other statutes and joint resolutions of said State; Mary Reynolds, wife of James Reynolds; James Annett, Alexander Annett, Catharine Burdett, wife of John F. Burdett; Robert Annett, Hannah Hawes, George W. Annett, John P. Annett, Emily A. Huber, wife of Charles Huber; Stephen Annett, Catharine Taillant, wife of George Taillant; Robert A. Annett, George W. Annett, Matilda Annett and Annie Annett, being the owners of lands fronting on the Hudson river, situate in the Townships of Ridgefield and Englewood in the County of Bergen and State of New Jersey, which lie above high watermark, and in front of which the lands hereinafter leased lie, and so are riparian proprietors within the said acts and joint resolutions; and being desirous of obtaining a lease for the lands under water hereinafter leased, which have not been improved and are not authorized to be improved under any grant or license protected by the provisions of the said act; and having applied to the Commissioners appointed under said act approved March 31st, 1869, and to the Governor of said State, and to the Attorney-General thereof, and requested them to designate what lands under water lie in front of said lands, owned by said applicants within the exterior lines mentioned in the eighth section of said supplemental act; and to fix the annual rental for the lease of so much of said lands under water as lies below high water mark, and may properly be included in the lease; and to certify the boundaries and the annual rental to be paid for the same;

And whereas, in compliance with the said application, the said commissioners, to wit, Francis G. Lathrop, Charles S. Olden and Bennington F. Randolph and Thomas McKean appointed in the place of Peter Vredenburgh, now deceased, and the Governor of said state, to wit, Joel Parker, have by their certificate under their hands designated: All those tracts of lands hereinafter leased as tracts of land under water, that lie below high water mark within the exterior lines mentioned in the eighth section of the said act,

and certified the boundaries hereinafter described as the boundaries of the tracts for which a lease is desired ; and fixed and certified seven hundred and fifty-seven dollars and seventy-five cents as the annual rental to be paid for said lands under water so designated, and did fix the sum of ten thousand eight hundred and twenty-five dollars as the price or compensation, on payment of which a conveyance of all or any part of the said lands free from rent would under said act be made;

And whereas, the said applicants have hereby secured to be paid to the treasurer of this state, the said annual rental and applied to the said Commissioners for a conveyance assuring to them, their and each of their heirs and assigns, the land under water so described in said certificate;

Now, therefore, the said State of New Jersey, by the said Commissioners, the Governor concurring, in consideration of the premises and of the rent, covenants and conditions hereinafter contained, doth hereby bargain, sell, lease and convey unto the said Mary Reynolds, James Annett, Alexander Annett, Catherine Burdett, Robert Annett, Hannah Hawkes, George W. Annett, John P. Annett, Emily A. Huber, Stephen Annett, Catherine Taillant, Robert A. Annett, George W. Annett, Mathilda Annett and Anna Annett and to their heirs and assigns forever,

All those two tracts of land under the waters of the Hudson river, described as follows :

First Tract.—All that tract of land under the waters of the Hudson river in the Township of Ridgefield in the County of Bergen and State of New Jersey, beginning at high water mark on the west shore of the Hudson river at the northeasterly corner of a tract of land belonging to Robert Annett, and from thence running south sixty degrees and thirty minutes east six hundred and ten feet to the exterior line for solid filling as shown on the sectional map number three made by the Commissioners appointed under the authority of the act entitled "An Act to ascertain the rights of the State and of the riparian owners in the lands lying under the waters of the Bay of New York and elsewhere in the State," approved April 11th, 1864 ; thence along said exterior line for solid filling 1st north twenty-nine degrees and thirty minutes east one hundred feet and 2nd north thirty-one degrees east sixteen hundred and seventy feet, thence north fifty-nine degrees west two hundred and forty-five feet to the high water mark on the west shore of the Hudson river, thence southwesterly along the high water mark of said shore to the place of beginning.

Second Tract. All that tract of land under the waters of the

Hudson river in the Township of Englewood in the County of Bergen and State of New Jersey, beginning at high water mark on the west shore of the Hudson river at the northeasterly corner of lands of W. H. Allison and from thence running south sixty-one degrees and ten minutes, east three hundred and ninety feet to the exterior line for solid filling as shown on the sectional map number two made by the Commissioners appointed under the authority of the act entitled, "An Act to ascertain the rights of the State and of the riparian owners in the lands lying under the waters of the Bay of New York and elsewhere in the State," approved April 11th, 1864; thence north twenty-eight degrees and fifty minutes east three hundred and ninety-five feet along said exterior line for solid filling; thence north sixty-one degrees and ten minutes west three hundred and thirty feet to the high water mark on the west shore of the Hudson river; thence southwesterly along the high water mark of said shore to the place of beginning.

And also the right, liberty, privilege and franchise to exclude the tide water from so much of the land above described as lies under tide water, by filling in or otherwise improving the same, and to appropriate the land above described to their exclusive private use. And also all and singular the lands under water between the above mentioned exterior line for solid filling and the exterior line for piers mentioned in said act first recited, and the most northerly line of the first described tract extended easterly to said pier line, and the most southerly line of the first described tract extended easterly to said pier line.

And also the right, liberty, privilege and franchise of building piers alone upon the land last above conveyed, that is to say, that which lies between the exterior lines already fixed, above mentioned.

And if and when said exterior lines shall be fixed at any other points or places further out into said river; also any and all land under water lying between the present exterior line for solid filling, above described, and said new exterior line or lines for solid filling, and within the extension of the northerly and southerly lines aforesaid, extended easterly to said new exterior line for solid filling, with the right, liberty, privilege and franchise of excluding from the land lying within the bounds last mentioned, the tide water, by filling in or otherwise improving the same, and to appropriate the land last described to exclusive private uses.

And if and when said exterior lines shall be fixed at any other points or places further out into said river; also any land lying between the new exterior line or lines for solid filling, and within said

northerly and southerly lines extended easterly to said new pier line or lines, with the right, liberty, privilege and franchise of building piers alone upon the land last mentioned; together with the right so far as the upland, from time to time made, shall adjoin the navigable water, to the perquisites of wharfage and other like tolls and charges.

To take, to have and to hold, use, excercise and enjoy the said lands and premises, and all the rights, liberties, privileges, franchises and perquisites aforesaid, exercisable within and over, or with reference to the same, to and for the said several uses, intents and purposes, and in the manner and form that they are above granted unto the said riparian proprietors, their heirs and assigns in the proportion, viz: To the said John P. Annett, Emily A. Huber, Stephen Annett, Catherine Taillant, Robert A. Annett, George W. Annett, Mathilda Annett and Annie Annett, children of Stephen Annett, deceased, their heirs and assigns, one equal eighth part, and the remaining seven equal undivided eighths parts thereof to said Mary Reynolds, James Annett, Alexander Annett, Catherine Burdett, Robert Annett, Hannah Hawes and George W. Annett, and to their heirs and assigns forever subject to the regulations now imposed by law on the exercise of the said rights of property hereby granted, and to such as shall hereafter lawfully be made, yielding and paying therefor unto the said the State of New Jersey the annual rent of seven hundred and fifty-seven dollars and seventy-five cents to be paid to the State of New Jersey by the said applicants, heirs and assigns, in two equal half-yearly payments, one-half thereof on the eighteenth day of April and the other on the eighteenth day of October in each and every year forever, the first payment to be made on the eighteenth day of October in the year eighteen hundred and seventy-four.

And the said applicants do hereby for their heirs, executors, administrators and assigns covenant and agree to and with the said the State of New Jersey, that they the said applicants, their and each of their heirs, executors, administrators and assigns, shall and will from time to time, and at all times, well and truly pay, or cause to be paid, to the said the State of New Jersey, the yearly rent or sum of seven hundred and fifty-seven dollars and seventy-five cents hereinbefore reserved, upon the several days and times hereinbefore appointed for the payment thereof, and that if it shall happen that the said yearly rent, or any part thereof, shall at any time hereafter be behind and unpaid for the space of sixty days next after the same shall become due, it shall be lawful, without demand for such rent in arrear, for the said the State of New Jer-

sey, by its officers and agents or otherwise, into the said tract of land and every part part thereof to enter and distrain all things on said premises for said annual rent, or such part thereof as shall be behind and unpaid, and the distress and distresses there found to take and convey away and detain and keep, or otherwise dispose of according to law, until the said rent and all arrears thereof and the costs and charges occasioned by the non-payment thereof at the time in that behalf above mentioned shall be fully paid and satisfied ; and also that in such case it shall be lawful, without demand for such rent in arrear, for the said State of New Jersey, by its officers or agents or otherwise, into the said tracts of land hereby leased to re-enter and the same and every part thereof, and all improvements, and all the rights, liberties, privileges and franchises aforesaid to have, possess and enjoy.

And the said State doth hereby covenant and agree to and with the said applicants, their and each of their heirs and assigns, that a conveyance will be made to the said Mary Reynolds, James Annett, Alexander Annett, Catherine Burdett, Robert Annett, Hannah Hawes, George W. Annett, John P. Annett, Emily A. Huber, Stephen Annett, Catherine Taillant, Robert A. Annett, George W. Annett, Mathilda Annett and Annie Annett, their heirs and assigns, of the said lands, rights, liberties, privileges and franchises, or any part thereof they may desire, free and discharged of the whole or of an equitable portion of the said rent, on their paying to the said State the sum of ten thousand eight hundred and twenty-five dollars, or an equitable proportion thereof and upon application duly made therefor.

And the said State also covenants to and with the said applicants, their and each of their heirs and assigns, that the said State will not make or give any grant, license, power or authority to any other person or corporation affecting lands under water in front of said lands hereby leased.

In witness whereof, the said Commissioners have hereunto respectively set their hands and the Great Seal of the said State is hereunto affixed, and these presents have been signed by the said Governor, and attested by the Secretary of State, and the said applicants have also hereto set their hands and seals this eighteenth day of April in the year eighteen hundred and seventy-four.

Attest:
HENRY C. KELSEY.
(L. S.)

The words "and the Attorney-General thereof, to wit, Robert Gilchrist," in the first page; the words, "and the Attorney-General," in the second page; and the words, "Attorney-General and" on the fifth page erased; and the words "or an equitable proportion thereof" interlined before the execution thereof.
Witness,
R. C. BACOT.

JOEL PARKER,
F. C. LATHROP,
CHARLES S. OLDEN,
BENNINGTON F. RANDOLPH,
THOMAS MCKEEN,
HANNAH HAWES, (L. S.)
WASHINGTON HAWES, (L. S.)
ROBERT ANNETT, (L. S.)
GEORGE W. ANNETT, (L. S.)
G. H. TAILLANT, (L. S.)
CATHERINE TAILLANT, (L. S.)
JOHN F. BURDETT, (L. S.)
CATHERINE BURDETT, (L. S.)
STEPHEN ANNETT, (L. S.)
EMILY HUBER, (L. S.)
ALEXANDER ANNETT, (L. S.)
MRS. J. REYNOLDS, (L. S.)

As by said agreement, to which your informant craves leave to refer when produced, will appear.

And your informant shows unto your Honor, that the commissioners aforesaid, having due regard to the interest of navigation, agreed to lease the lands before mentioned to the defendants aforesaid, and determined the sum of three hundred and seventy-eight dollars and eighty-seven cents, as the semi-annual rental to be paid for said lands, and did fix the sum of ten thousand eight hundred and twenty-five dollars as the price or reasonable compensation on payment of which a conveyance of all or any part of the said lands, free of rent, would under said act be made; and said defendants were permitted and did enter into possession of said lands, and have used and occupied them ever since, and enjoyed all the income and profits to be derived therefrom.

But your informant shows that the said defendants have not fulfilled the covenants in said agreement recited; but on the contrary have not from time to time, and at all times, well and truly paid or caused to be paid to the State of New Jersey, the semi-annual rent or sum of three hundred and seventy-eight dollars and eighty-seven cents, upon the several days and times appointed for the payment thereof, but have neglected and refused to pay the said sum, although often requested to do so, until there remains due the said

State of New Jersey up to the eighteenth day of October, A. D. eighteen hundred and ninety, for rentals and interest accrued thereon, the sum of eighteen thousand five hundred and four dollars and sixty-five cents; nor have the said defendants or any one for them, ever tendered or offered to pay the principal sum of ten thousand eight hundred and twenty-five dollars, the price or reasonable compensation, on payment of which a conveyance of all or any part of said lands free from rent would under said act be made; nor have the said defendants secured to be paid to the treasurer the semi-annual rentals, as required by the act of the Legislature, and recited to have been done in the before mentioned agreement.

And your informant shows unto your Honor that none of the said defendants have ever paid to the State of New Jersey, the rents reserved in the said lease or agreement in writing or the principal sum fixed thereby; nor has any one ever paid any portion of either the said sums on their behalf.

And your informant further shows unto your Honor that after the execution of the said lease, Alexander Annett departed this life, as your informant is informed and believes, leaving a wife and several children, who removed to the State of New York.

And your informant further shows unto your Honor, that after the execution of the said lease John F. Burdett departed this life, as your informant is informed and believes, leaving a widow, Catherine Burdett, who resides at Fort Lee, N. J.

And your informant further shows unto your Honor that subsequent to the execution of the said lease Robert Annett departed this life, leaving his property, by will, to his widow, Elizabeth, who lives at Fort Lee, N. J., as your informant is informed and believes.

And your informant having made diligent and careful inquiry is informed and believes that Hannah Hawes, and her husband Washington Hawes, now live in Port Richmond, Staten Island, N. Y.

And your informant further shows unto your Honor, that after the execution of the said lease, Catherine Taillant, and her husband George H. Taillant, departed this life, leaving a son George Taillant, who resides on East Eighty-sixth street, New York city, as your informant is informed and believes.

And your informant further shows unto your Honor, that subsequent to the execution of the said lease, Robert A. Annett left this country, and as your informant is informed and believes is now in the West Indies.

And your informant further shows unto your Honor, that after the execution of the said lease Mathilda Annett removed from this

state, and now lives on East Eighty-sixth street, New York city, as your informant is informed and believes.

And your informant further shows unto your Honor, that after the execution of the said lease Annie Annett departed this life, as your informant is informed and believes.

And your informant charges that the payment of the said annual rental, at the times specified, was of the essence of the above agreement ; that by the constitution of the State and the statutes passed by virtue thereof, the annual rentals reserved in said agreement became a part of the fund for the support of free schools, required by the constitution, as soon as it becomes due and payable, to be securely invested and to remain a perpetual fund, and the income thereof to be devoted to the support of public schools for the equal benefit of all the people of the state ; and it is further provided by the said constitution it shall not be competent for the Legislature to borrow, appropriate or use the said fund, or any part thereof, for any other purpose under any pretence whatever. And the Legislature are directed to provide for the maintenance and support of a thorough and efficient system of free public schools for the instruction of all the children in this State, between the ages of five and eighteen years, out of the fund so received from such rentals.

That at the time of the execution of the said contract the defendants well knew that the said Commissioners had no power to contract, except as provided in said acts, and that time was material in the performance of their covenants to pay the rents.

And your informant expressly charges that on the days and times when the said rents became due and payable, they became part of the fund so protected and appropriated by the constitution, and that the withholding of the payments beyond the times limited was a constructive fraud and attempt to convert a portion of the fund so protected to private uses, thus preventing the trustees for the support of public schools from disposing of it, as directed and required by the constitution and laws of this State.

And your informant charges that the said action of the said Riparian Commissioners in fixing and determining said annual rentals, price, or reasonable compensation, was induced by the covenants of the said defendants, that they would pay the rent, at the time specified,or pay the price fixed so that the said sums would at the dates provided become a part of the fixed revenue of the State devoted to the purposes aforesaid ; and that in making the covenants aforesaid the said commissioners were imposed upon by the said defendants, who pretended to secure the said sums to be paid to the treasurer of the State at the time specified, but the result has proved that

the security of the agreement was inadequate, and not such as the justified action of the commissioners under the act, and that the promises and covenants were not intended to be fulfilled.

And your informant further charges that believing the said annual rentals or price or reasonable sum, were secured to be paid at the times specified, and relying upon the covenants of the said defendants that they would from time to time, and at all times, well and truly pay, or cause to be paid, to the said the State of New Jersey the said annual rent of three hundred and seventy-eight dollars and eighty-seven cents, upon the several days and times appointed for the payment thereof, the said State did on its part covenant and agree to and with the said defendants, their successors and assigns, that a conveyance would be made to the said defendants, their successors or assigns, of the said lands, rights, liberties, privileges and franchises, or of any part thereof they might desire, free and discharged of the whole, or of an equitable portion of the said rents, on their paying to the said State the sum of ten thousand eight hundred and twenty-one dollars, or an equitable portion thereof, and upon application duly made therefor; and the said State is also covenant to and with the said defendants, their successors or assigns, that the said State would not make or give any grant,license, power or authority to any other persons or corporations affecting lands under water in front of said lands thereby leased.

And your informant charges that it is most inequitable and unjust that the said defendants should continue to hold the State bound by its said covenants, while they wholly neglect and refuse on their part to comply with the covenants and agreements made by them, which covenants on the part of the said defendants are made by the statutes a condition precedent to any action or covenant on the part of said State, and the fulfillment of the conditions of which were necessary in order to clothe the Commissioners with the requisite power to bind the State, and to enable the trustees to execute their trust.

And your informant charges that the State has never received any consideration whatever from the defendants on the aforesaid agreement in writing or lease, but, on the contrary, the said defendants refused to pay the said rentals, although repeatedly requested so to do, denying that they are bound by their covenants to pay the said sums on the days and at the times specified in said agreement, in writing or lease, pretending that time was not of the essence of the contract; and that, if required to pay the rentals at all,they could pay the same at their own convenience,the contrary of which your informant charges to be true. And sometimes they pre-

tend that the said agreement or lease was a conveyance of the premises in question in fee simple, and that they have a right to hold the said property free from the payment of the said rentals, because the said agreement says that "in consideration of the premises and of the rents,covenants and conditions hereinafter contained, the State of New Jersey, doth hereby bargain, sell, lease, and convey the said Mary Reynolds, James Annett, Alexander Annett, Catherine Burdett, Robert Annett, Hannah Hawes, George W. Annett, John P. Annett, Emily A. Huber, Stephen Annett, Catherine Taillant, Robert A .Annett George W. Annett, Mathilda Annett and Annie Annett, and to their heirs and assigns forever." The contrary of which your informant charges to be true.

And your informant charges that the said commissioners had no power to execute any conveyance of the said lands free from rent, except upon the payment of the price, or reasonable compensation, which was fixed at the sum of ten thousand, eight hundred and twenty-five dollars, and that no part of such sum has ever been paid or tendered ; and that any construction of said agreement or lease, which holds it to be a conveyance in fee simple, renders it wholly invalid and inoperative as beyond the power of the party making it.

And your informant further charges that it would be a fraud on the State, and contrary to the express provision of the constitution, to insist that the land was conveyed away, or could be conveyed away, by the agents of the State without any consideration whatever therefor.

And your informant charges that the covenant on the part of the State that a conveyance will be made to the said defendants, their successors and assigns, of all the rights, privileges and franchises, or any part thereof, on the payment by the said defendants, their successors or assigns, to the State of the sum of ten thousand, eight hundred and twenty-five dollars, is wholly inconsistent with any construction of said agreement, lease or instrument in writing, which would make it a conveyance to the said defendants, their heirs or assigns, in fee simple ; but, on the contrary, the proper construction of the said agreement, lease or instrument in writing is, that if the said defendants should pay the annual rental at the times, and in the manner specified therein, they shall be permitted to occupy the said lands and premises, and that the State will at any time during the pendency of said lease receive the price or reasonable compensation fixed, and give a conveyance to them, their successors or assigns, free and discharged of the rent ; and that in such case will not make or grant to any other person or corporation

any power or authority affecting lands under water in front of the lands so leased or conveyed to the defendants.

And your informant further charges that the said defendants have continued to occupy the said premises without paying either the semi-annual rental or purchase money for sixteen years and six months last past, and still continue to occupy the same without paying the rent or principal sum, although repeatedly requested to do so, and informant fears, and has reason to apprehend, that the defendants, their heirs, devisees, personal representatives or assigns, will continue the oft repeated breaches of their covenants, and occupy the premises in question without paying any rents therefor, or any portion of the principal sum or purchase money fixed by the said agreement, under and by virtue of the authority of said act of Legislature recited in the agreement aforesaid, and made a part thereof, thus depriving the cestui que trusts of all benefit from the fund provided by the constitution and laws of the State for their education, and rendering the trustees of the said school fund powerless to perform their trust in this regard.

And your informant further charges that it is contrary to public policy that the State should remain bound by its covenants to convey and assure the enjoyment of the valuable rights attached to the premises by adjacency to navigable waters while the defendants without excuse disregard their solemn covenants.

Informant charges that by reason of the obstinate and persistent refusal of the defendants to perform their covenants and pay the rents reserved, or the principal sum or purchase money, the State and its agents have been unable to perform its and their constitutional obligations. That the State has suffered and is suffering an injury which cannot be compensated in damages, and for which there is no adequate relief at law, and is, therefore, entitled to have the agreement rescinded and delivered up to be cancelled, and to be released from its covenants, so that the premises may be disposed of to other parties free and clear from all encumbrances arising from said agreement.

And your informant charges that inasmuch as the Court of Errors and Appeals has decided that the lands under water granted by the State to a corporation, under the eighth section of the riparian act, are not lands belonging to the State within the meaning of the railroad act, although in such grant the rent payable to the State is reserved, and in the instrument of grant, power to re-enter for nonpayment of rent is reserved ; and that such lands may be condemned and applied to other public uses by proceedings to condemn against the grantee ; and has declared that the language of the

grant is such as is appropriate in a conveyance to a corporation to create a fee, and that by force of such grant every particle of the estate of the grantor is transmitted to the grantee, and no residue of the estate in the lands such as is essential to an estate in reversion remained in the grantor; the right of re-entry reserved in the lease under consideration becomes valueless, contrary to the intention of the parties; and defendants may continue in possession unmolested without paying the rentals as they have accrued, or as they may become due and payable hereafter, and without tendering the principal sum as specified in said lease or agreement in writing, therefore, informant respectfully submits that it is the province of equity and the duty of this Court to protect the equitable estate remaining in the grantor, and direct that the said agreement, or instrument in writing, be delivered up to be cancelled, that it may not be used contrary to the intention of the parties, constitution and laws of the State, or to protect the defendants in their inequitable and unjust refusal to pay the rents as they accrue from time to time or the purchase money as agreed upon.

And your informant further charges that the trustees for the support of public schools are trustees for the execution of a public charity, and that it is the duty of the Court of Chancery on the information of the Attorney-General to give a proper direction to the execution of the trust, and to construe contracts made for the execution of the trust in the light of the purposes for which they were made; and if time is of the essence of the contract, and necessary in order to carry out the purposes for which the contract was made, it will be strictly enforced in equity as well as at law.

All which actings, doings and pretences of said defendants are invasions of the rights of property of the State of New Jersey, in and to the lands aforesaid, and are contrary to equity and good conscience, and are an irreparable wrong and injury to the said State.

In tender consideration whereof, and forasmuch as the State of New Jersey is without adequate relief in the premises at and by the strict rules of the common law, and can only obtain relief in this Honorable Court where matters of this kind are properly cognizable; to the end therefore, that the said defendants may to the best and utmost of their knowledge, information and belief, full, true and perfect answer make to all and singular the matters aforesaid without oath. And that the said lease or instrument in writing, so executed by the said Commissioners to the said defendants, may be decreed void and set aside as having been obtained by fraud and imposition; and that the same may be declared forfeited and abandoned by the said defendants, by reason of their obstinate

and wilful refusal to execute and perform their covenants therein recited ; and also by reason of the total failure of all consideration therefor. And that the said defendants may be decreed to deliver up the said lease, or instrument in writing, to be cancelled, and that they may be decreed to account with the State of New Jersey for all the annual rentals reserved in said lease, or instrument in writing, and the interest accrued thereon from the times when the said semi-annual rentals became due and payable, by virtue of said lease or instrument in writing, and that your informant may have such other and further relief as may be agreeable to equity and good conscience and to your Honor may seem meet.

May it please your Honor, the premises considered, to grant unto your informant the State's writ of subpoena issued out of and under the seal of this honorable Court, to be directed to the said Mary Reynolds, wife of James Reynolds, James Reynolds, James Annett, Catherine Burdett, Hannah Hawes, George W. Annett, John P. Annett, Emily A. Huber, Stephen Annett, Robert A. Annett, Mathilda Annett, Washington Hawes, John F. Burdett and to their heirs, devisees, personal representatives or assigns, commanding them, by a certain day and under certain penalties therein to be expressed, to be and appear before your Honor in this honorable Court, then and there to answer all and singular the said premises, and stand to, abide by, and perform such order and decree therein as to your Honor shall seem meet and agreeable to equity and good conscience.

And your informant as in duty bound will ever pray.

JOHN P. STOCKTON,
Attorney-General,
Informant.

State of New Jersey, Mercer county, ss.—George R. Gray, being being duly sworn on his oath saith that he was elected treasurer of the State of New Jersey, and is now treasurer of the said State ; that, by virtue of his office, he is also treasurer of the fund for the support of public schools, and has charge of all the property of said fund, including the riparian leases that he has in his possession at the present time, the lease, or agreement in writing, between the riparian commissioners and Mary Reynolds, wife of James Reynolds, James Annett, Alexander Annett, Catherine Burdett, Robert Annett, Hannah Hawes, George W. Annett, John P. Annett, Emily A. Huber, Stephen Annett, Catherine Taillant, Robert A. Annett, George W. Annett, Mathilda Annett, Annie Annett, Washington Hawes, John F. Burdett and George H. Taillant set out in the foregoing information : that he has in his possession the books, papers

and accounts of the State of New Jersey, including the receipts and disbursements of the school fund of the State, and that he has examined the same for the purpose of ascertaining what, if any, sum has ever been paid to the State in pursuance of the said lease, by or on behalf of any of the parties thereto ; and deponent says that the result of his examination is, that the annual rentals therein have not been paid at the times specified therein, nor has any rentals whatever been paid on said lease ; that the accumulated sum, with interest thereon on the eighteenth day of October, eighteen hundred and ninety, amounted to eighteen thousand, five hundred and four dollars and sixty-five cents. That the said defendants have never tendered to him, nor any one else representing the State to the best of this deponent's knowledge and belief, the principal sum of ten thousand eight hundred and twenty-five dollars, nor has any such sum been paid to the State by said defendants.

And deponent further saith that after diligent inquiry therefor, made as in case of absent defendants, he has been unable to ascertain the names and residences of the heirs, devisees and personal representatives of those parties believed to be dead, further than is set forth in the foregoing information.

And the deponent further saith that he has read the foregoing information, and the facts stated therein, so far as they concern his acts and deeds, are true, and so far as they concern the actings and doings of others he believes them to be true.

GEO. R. GRAY.

Sworn and subscribed before me, this 8th day of April, A. D., eighteen hundred and ninety-one, at Trenton, N. J.

WILLIAM Y. JOHNSON,
M. C. C.

IN CHANCERY OF NEW JERSEY.

Between JOHN P. STOCKTON, Attorney-General, Informant, and ANNETT HEIRS, Defendants.	Information. Brief on Motion to dismiss Information.

On April 18th, 1874, the Riparian Commissioners of New Jersey made a lease in perpetuity to the defendants of certain lands under water at Fort Lee, on the Hudson, belonging to the State,in consideration of certain annual rentals to be paid to the State, which were secured by the usual clauses of distress and forfeiture. The defendants never paid the rentals, and the Attorney-General now brings an information to have the lease forfeited and to compel the defendants to account for the accrued rentals. On behalf of Washington Hawes and Hannah Hawes, two of defendants, I have moved the Chancellor to dismiss the information as to them on the ground:

(1) That the Court of Chancery has no jurisdiction of the case stated in the information, for the reason that no fraud, want or inadequacy of consideration, or lack of adequate remedy at law, is shown, and because of delay in filing the information.

(2) That the information is multifarious in asking for accounting of rents, and that the lease be declared void for fraud.

(3) That there is no equity in the information.

POINT I.

I conceive the substance of the Attorney-General's case to be this:

That the Commissioners made a perpetual lease of the lands in question for an annual rental therein named, the payment whereof they intended to secure by reserving the right of entry for distress or forfeiture in case of non-payment.

That the lessees have defaulted in payment of the rentals and the

clauses of entry to enforce the same have proved to be valueless in law, and the State is therefore powerless to recover the land, or to enforce the collection of the rents reserved. That this amounts to a conveyance without consideration, and is therefore a fraud which vitiates the lease.

Touching the question of fraud, I submit:

(1) That there is no positive allegation or proof of actual fraud or imposition in obtaining the lease. The instrument itself shows that the Commissioners fixed their own rules and conditions, to which the lessees were obliged to conform in making their application, and that they (the Commissioners) fixed the rentals and drew the deed.

(2) That the non-payment of the rents is no proof or indication of fraud. The fact of the price not being paid is no ground to set aside a deed.

In Crane v. Conklin, Saxt., the Court says, page 358, " The fact of the price not being paid is no ground to set aside the deed. The fraud must be in the original transaction or contract, not in the non-fulfillment of the contract. If the original transaction was valid at the time, it is not rendered invalid by any subsequent act or omission of the defendants."

In Bank of New Brunswick vs. Hassert, Saxton 1, the Court says : "The mere inadequacy of price is not sufficient to avoid a contract or set aside a sale. * * * The complainants have been unfortunate, it is true. They relied on the promise of the defendant in execution and he deceived them. They next relied on receiving the money out of the proceeds of the sales * * * and were again deceived. Under these circumstances it is not in the power of this Court to render them any assistance."

In Shotwell vs. Shotwell, 9 C. E. Green, 378, the Court goes still further and says, "Equity will not declare a sealed instrument void merely for want of consideration, nor will it permit the consideration to be inquired into with a view to setting aside the instrument on that ground."

(3) There is no dispute as to the adequacy of the sum fixed as the annual rent, nor is there any question as to the power of the Commissioners to make such a lease, provided the payment of the rentals are properly secured. By the 8th section of the riparian act of 1869, Rev. p. 984, the power is clearly given to the Commissioners to make such a lease on receiving the annual rentals, or securing the same to be paid. The lease follows closely the provisions of that section, and by its terms it is apparent that it was carefully drawn, with a full comprehension of the liability of

the lessees to default. Nor is there any serious question as to the prudence and discretion exercised by the Commissioners in making the lease, if we assume the validity and availability of the clauses of entry, distress and forfeiture.

The leasing of land subject to an annual rental, adequate in amount, and secured by the right of entry, distress and forfeiture, is one of the safest and commonest of business transactions. In the very nature of things there can be no security for the payment of rents for the use of land more absolutely safe and unfailing than the pledge of the land itself and the improvements thereon.

The position of the Attorney-General is therefore reduced to this: That the State is unable to collect the rents or recover the land under the clauses of distress and forfeiture in the lease, as was contemplated by the Commissioners when the lease was executed, and that this amounts to constructive fraud sufficient to set aside the lease.

If the State can collect the rents by distress, or recover the land at law, there was and is no constructive fraud.

I conceive this to be the vital point in the argument. Can the State enter upon the lands in question and distrain or recover the same by ejectment?

I submit in passing, that the State having recited in the deed that the rents had been secured, is now estopped from claiming to the contrary. But, waiving that, let us investigate the validity of the clauses of entry, distress and forfeiture contained in the lease.

The instrument leases in perpetuity to the defendants certain lands under the water belonging to the State, for a certain annual rental, the payment whereof it recites has been secured to be paid. In Hudson Tunnel Company vs. Attorney-General, 12 C. E. Green, 573, the Court of Errors construes the granting words of a precisely similar riparian lease thus: "The language of the grant is such as is appropriate in a conveyance * * * to create a fee. * * * By force of such a grant, whether made by the State or an individual, every particle of the estate of the grantor is transmitted to the grantee."

After the habendum comes a covenant by the lessees to pay the rents reserved, followed by the clause of entry thus: "If it shall happen that the said yearly rent, or any part thereof, shall at any time hereafter be behind and unpaid for the space of sixty days next after the same shall become due, it shall be lawful without demand for such rent in arrear, for the said the State of New Jersey, by its officers and agents or otherwise, into the said tract of land and every part thereof to enter and distrain all things on said

premises for said annual rent, or such part thereof as shall be behind and unpaid, and the distress and distresses there found to take and convey away and detain and keep, or otherwise dispose of according to law, until the said rent and all arrears thereof, and the costs and charges occasioned by the non-payment thereof at the time in that behalf above mentioned, shall be fully paid and satisfied; and also that in such case it shall be lawful, without demand for such rent in arrear, for the said State of New Jersey, by its officers or agents or otherwise, into the said tracts of land hereby leased to re-enter and the same and every part thereof, and all improvements, and all the rights, liberties, privileges and franchises aforesaid to have, possess and enjoy."

These provisions are all that are pertinent to the immediate object of our inquiry.

I maintain that this lease vested in defendant an estate in fee simple, with the payment of the rent reserved. Such an estate is common, and is called in the text books an estate upon condition. It is further classified in the books, under the head of estates upon condition as an estate upon condition subsequent. The text books and reports are full of precisely similar cases.

Thus: Blackstone, Cooley's Ed. of 1876, p. 152, says:

"An estate upon condition expressed in the grant itself is where an estate is granted either in fee simple or otherwise, with an expressed qualification annexed whereby the estate granted shall either commence, be enlarged or be defeated upon performance or breach of such qualification or condition. Such conditions are divided into precedent and subsequent. If a man grants an estate in fee simple, reserving to himself a certain rent, and that if such rent be not paid at the times limited it shall be lawful for him and his heirs to re-enter and avoid the estate—in this case the grantee and his heirs have an estate upon condition subsequent, which is defeasible if the condition be not strictly performed."

In note, page 151—Judge Coolet says: "Littleton says divers words there be which by virtue of themselves make estates upon condition * * * the words, if it happen, will make a condition in a deed provided a power of entry is added."

In Farley vs. Craig, 6 Hal., 262, the Court quotes Littleton as follows: "If a man enfeoff another in fee simple, reserving to himself and his heirs yearly a certain rent, payable at a certain feast per annum, on condition that if the rent be behind, &c., it shall be lawful for the feoffor or his heirs to enter, &c., in such case if the rent be not paid at the time limited and specified within the condition, then may the feoffor or his heirs enter into such lands or tenements

and then in his former estate have and hold and the feoffee quite oust thereof, and it is called an estate on condition because the estate of the feoffee is defeasible if the condition be not performed."

2 Washburn on Real Property, 4th Ed., p. 280, star page, says: "Thus one may enfeoff another in fee, reserving to himself and heirs a rent, with a condition that he may enter and repossess himself of the original estate upon non-payment thereof. This constitutes a conditional estate which the grantor or his heirs may be able to enforce, but not an assignee or grantee of the rent. It is not properly a lease, because the claimant of the rent has no reversion. But it was held to create a lien upon the land for the payment of the rent, which would take precedence of a mortgage made by the first purchaser of the premises to a stranger."

2 Washburn (supra) page 3 and 5, star page, says: "Conditions subsequent are such as, when they do happen, defeat an estate already vested. * * *

"Among the forms of expression which imply a condition in a grant the writers give the following: 'On condition', 'provided always', 'if it shall so happen' * * * and grants made upon any of these terms vest a condition estate in the grantee. * * *"

An instance of a condition subsequent would be a deed to one in which the grantor reserves to himself a rent with a right to enter and defeat the estate if the rent shall be in arrear. A condition annexed to a conveyance in fee that the grantee shall pay the grantor or his heirs an annual rent and in default the grantor may enter, is a good condition.

See also Van Rennselear vs. Ball, 19 N. Y., 100.

Waters vs. Braden, 70 Penn., 235.

I submit, therefore, that this is a plain, simple and ordinary case of an estate upon condition.

The State, therefore, has a full and adequate power (1) to enforce payment of the rents in arrears by entry upon the lands in question and distress of the property there found—(2) to forfeit the lease and recover the land by ejectment.

The latter remedy is available to the State by common law; and by Sec. 12 of the Supplement to the Riparian act of 1869—Rev., p. 285—the Commissioners are specially authorized to maintain ejectment for the recovery of lands belonging to the State.

But the information alleges (fol. 22) that the Court of Errors having decided that such a lease vests in the lessee a fee, with no reversion remaining in the State, therefore, the right of re-entry for distress or forfeiture is valueless, and the State is powerless to collect for rentals or recover the land.

The authority referred to I take to be the Hudson Tunnel Co. vs. Co. Atty. Gen., 12 C. E. Green, 573—hereinbefore referred to. The Court has only to read that case to see how utterly it fails to bear out the interpretation of the Attorney-General. The language of that decision upon which the Attorney-General relies is as follows (page 557):—"The grantees are corporations possessed of the attribute of perpetual existence. The language of the grant is such as is appropriate in a conveyance to a corporation to create a fee. It is not alleged in the information that the donation of the estate is limited in express terms. By force of such a grant, whether made by an individual or by the State, every particle of the estate of the grantor is transmitted to the grantees. No residue of the estate in the lands, such as is essential to an estate in reversion, remains in the grantor.

"The use for which the lands were conveyed, is unqualified. The grantees might appropriate them to use in the construction of a tunnel, or convey them to another corporation having the capacity to execute such a work, without violating the terms of the grant, or putting the lands to a use inconsistent with the purposes for which they were granted.

"The interest which the State has in the premises is not an actual estate. It consists merely in a charge to secure the payment of the rent reserved, by distress and re-entry and taking possession. On a grant of the whole estate in fee simple, reserving a certain rent, with a clause for distress and re-entry for non-payment of the rent the owner of the rent has neither seigniory nor reversion. 2 Stephens, Comm., 25; Litt, Secs. 217, 218. A right of entry is not a reversion or estate in the land. Nichol vs. N. Y. & E. R. R. Co., 2 Kernan, 121. Nor is a mere possibility of reverter for condition broken which may or may not happen, an estate in reversion. 4 Kent 354; 2 Wash. on Real Property, 390.

"It is manifest that lands in which the State has no rights other than those specified, are not lands belonging to the State within the meaning of that section of the general railroad act which limits the power of corporations created under that statute, to condemn lands for the uses contemplated by the act."

This language not only does not substantiate the Attorney-General's position, but on the contrary it destroys it. It merely says that the State has no reversion (which is admitted; for there is no reversion in an estate upon condition) and that lands so leased do not come within the 36th section of the general railroad act. Nowhere is there any intimation that the Court regards the clauses of re-entry as inoperative and void. On the contrary, the whole reasoning of

the opinion proceeds upon the unquestioned assumption that the right of re-entry is undisputed.

If the clause reserving the right of entry is inoperative, then there is no right of entry. Yet the Court says, "A right of entry is not a reversion or estate in the land." Would the Court have used that language if there was no right of entry?

But the Court further says (page 578): "Nor can the injunction be retained in its present form, on the ground that the appropriation of the lands of the two corporations to the proposed use will diminish the revenues of the State.

"It was not argued in behalf of the respondents, that the consummation of the proceedings for condemnation will discharge the lessees from the payment of the rent, or cause an apportionment of the rent reserved. Nor is it charged in the information that the proposed use of the premises by the appellants will impair the value of the lands as security for the rent, or hazard the ability of the State to collect it off its lessees."

What is the meaning of such language? Is there the slightest intimation in it that the Court regards the State as helpless and unable to enforce the collection of the rents, or to appropriate the security therefor? The Court says: "It is not charged that the proposed use of the premises will impair the values of the lands as security for the rents." How can the lands be security for the rents, and how can that security be impaired, if the clauses of re-entry are inoperative and valueless?

I submit therefore that this case is in entire harmony with all of the text books and authorities above quoted. The lease vested in the Annetts, an estate upon condition, defeasible at the option of the State on the non-payment of the rents. If the rents are in arrears today, the State can enter and distrain, or recover the land by ejectment without entry.

"As a general rule it is not necessary to make an actual entry in order to maintain the action of ejectment. The right to enter, not the actual entry, is requisite to sustain the action. And even where upon strict common law principles an entry is necessary, as in the case of a forfeiture of an estate upon condition, to complete the title, an actual entry is not necessary to maintain ejectment."

Cornelius v. Ivins, 2 Dutcher, 376.

But even if the construction of the Tunnel case was as the Attorney-General claims, it would have no bearing on a suit between the original parties to the lease. Suppose the State to bring ejectment against the Annetts—the Attorney-General says they obtained the lease by fraud and imposition. Can they set up

their own fraud as a defence? They expressly covenanted that the State might enter and forfeit the lease if the rents were not paid. Would they be allowed to deny the plain and obvious intent of their own covenants?

As between the State and the Annetts in an ejectment suit it is not a question of real estate law, of estates in reversion or upon condition, but it is merely a question of contract. What is the meaning of the clauses of entry? The plain and obvious meaning is, that if the Annetts don't pay their rents the State can enter and distrain, or forfeit the lease. How then could the Annetts in an ejectment suit deny that such was the meaning and intent of those clauses? And if they could not make such denial, how could they prevent the State from taking advantage of the right thus plainly given it by express covenant?

POINT II.

The State then having a complete and adequate remedy at law, the bill should be dismissed.

"The general rule is familiar and too well settled to be questioned, that a court of equity will not interfere where the complainant had adequate relief at law."

Hoagland vs. Delaware Township, 2 C. E. Green, 114.

"Where the defence is of a character plain and palpable and within the command of the party at any time this court ought not to encourage a resort to an expensive litigation in a Court of Chancery."

Cornish vs. Bryan. 2 Stockton 146.

POINT III.

There is no ground for equity to interfere. It is simply a case of failure to pay rent and a forfeiture is the penalty. Equity will not help to collect rents, nor decree a forfeiture.

In Smith vs. Allen, Saxt., 51, the Court says: "It is said that equity does not assist in the recovery of a forfeiture. That is unquestionably the doctrine of this Court. * * * The case of Livingston vs. Tompkins, 4 John, C. R. 415, was an injunction case; and the injunction was moved for on the ground that the grant from the plaintiff to the defendant had ceased and become void in consequence of matters charged in the bill. In that case Chancellor Kent referred to a distinct and well known class of cases, showing that a man is not bound to answer so as to subject himself either directly or eventually to a forfeiture or penalty; and that a Court of Equity will not aid in working a forfeiture or divesting an es-

tate. * * * They (cases referred to) have reference to the forfeiture of some privilege, the divesting of some estate, the taking away of some right by condition subsequent or otherwise. * * * To effect these objects equity will not interpose."

In Crame vs. Conklin, Saxt., 353, the Court says:—"An ejectment bill is one brought simply for the recovery of real property, together with an account of the rents and profits without setting out any distinct and substantive ground of equity jurisdiction. A bill of this description would be demurrable, and could receive no countenance in this Court."

"Sometimes equity will relieve against the consequences of a breach of a condition and save the estate from forfeiture. But equity never lends itself to enforce a forfeiture."

Warner vs. Bennett, 31 Conn., 478. Den. vs. Lawrence Church, Spencer, 551, says:

"A Court of Equity will not lend its aid to divest an estate upon a condition subsequent."

POINT IV.

The lease cannot be used to vex or harass the State or cloud its title, as the State can remove the cloud, if any, by ejectment at any time. The principle governing such cases is well stated in Shotwell vs. Shotwell, 9 C. E. Green, 378, viz: "The principle on which relief is given in cases like the present is well enunciated in Martin vs. Graves, 5 Allen, 601.

"Whether a deed or other instrument exists which may be vexatiously or injuriously used against a party after the evidence to impeach or invalidate it is lost, or which may throw a cloud of suspicion over his title or interest and he cannot immediately protect or maintain his right by any course of proceedings at law, a court of equity will afford relief by directing the instrument to be delivered up and cancelled, or by making any other decree which justice and the rights of the parties may require."

See also Cornish vs. Bryan, supra.

POINT V.

The bill shows that State has suffered defendants to default for seventeen years and done nothing. This is gross laches and equity will not relieve, even if the other grounds alleged were good.

"A Court of Equity will not afford relief where the complainant has been guilty of gross laches, or where the injury was caused by his own inexcusable negligence and inattention to his interests."

Smith vs. Duncan, 1 C. E. Green, 240.

"Nothing, says the Chancellor, can call a Court of Equity into activity but conscience, good faith and a reasonable diligence. * * * It is not reasonable diligence for the party, when there is no disability and no impediments to the vindication of his rights, to lie passive for twelve years and call upon a Court of Equity for its aid, when the lapse of time and his own laches may have deprived his adversary of the means of defence."

Doughty vs. Doughty, 3 Halstead, 643.

POINT VI.

The information alleges that the money due on these leases belongs to the school fund, under the constitution, and the failure to pay constitutes a constructive fraud upon the trustees of that fund, and that it is the province of Chancery to interpose in this case on the theory of giving proper direction and effect to the administration of the school fund—(fols. 16 & 23).

To this it is sufficient to say :—

1. The constitution nowhere makes the receipts from sales or leases of riparian lands a part of the school fund.

2. The riparian act (Rev., p. 985, sec. 16) provides "that the moneys so received from the sales and rentals of the said lands under water shall be first appropriated to the payment of such appropriation as the Legislature may authorize from time to time, then to the payment and liquidation of the State debt, and afterwards the same shall be invested according to law and the interest thereof be annually paid over to the Trustees of the School Fund, to be appropriated by them towards the maintenance of free schools."

It is plain from this that these accrued rentals cannot be regarded as part of the school fund, because, as the Attorney-General correctly says in the information, the constitution expressly forbids the Legislature to borrow or appropriate the said fund ; yet here is an express statute providing for the disposition of these rents in two different channels, after which, not the rents, but the interest thereof, is to be paid over to the trustees of the school fund. There is nothing in the information to show that these rents if collected would not be applied to some legislative appropriation, or to the payment of the State debt. The lease is in no sense a contract made on behalf of the school fund. The school fund is not mentioned in it, the lessees never knew it in the transaction, and the trustees are not made a party to this suit.

The whole matter of the school fund has been lugged bodily into the case, and is entirely irrelevant.

POINT VII.

The information not only prays for forfeiture of the lease, but also for a decree that the Annetts pay the accrued rentals. I submit that this is a monstrous request to prefer to a Court of Equity. How can the State in conscience ask for the land if it is to receive the rents? The whole substance of the instrument is that the State was to have the rents or the land. If it receives the rents, it will be in the same position as though no default had been made, and cannot in conscience ask for anything more. It would indeed be a strange proceeding if the Court of Chancery of New Jersey should, contrary to all the rules of equity practice, lend its aid to enforce a forfeiture of an estate, and in the same decree order the payment of the rents, the non-payment of which furnishes the only ground for the forfeiture.

SUMMARY.

The case in a nut shell is this. The State has made leases to the Annetts on annual rentals secured by the right of re-entry, distress and forfeiture. For 17 years it has allowed the Annetts to default in payment of the rentals and now seeks to collect the rentals and forfeit the leases by decree of Chancery.

The State can maintain ejectment at any time. The right of entry is perfectly valid and at all times available. There is no fraud, actual or constructive, in the case. The leases were a prudent exercise of the discretion vested in the Riparian Commissioners, and the State's only trouble is in the neglect of its appropriate officers to enforce the payment of the rents by distress or ejectment. The school fund has nothing to do with the case. The demand for the rents and the forfeiture of the lease is inequitable and multifarious. There is, therefore, no equity in the bill.

GEO. L. RECORD,
Of Counsel with deft's Hawes.

SENATE CHAMBER, STATE HOUSE.

Trenton, N. J., Friday, December 5, 1906.

Meeting of Special Committee of the New Jersey Legislature to Investigate the Granting of Riparian Lands by the State, etc.

PRESENT:

SENATORS WAKELEE (chairman), MINTURN, AVIS, and ASSEMBLYMEN BARKER, HOLCOMBE, JONES, REED and CROWTHER.

CHAIRMAN WAKELEE.—I have received the following communication which I will read and enter on the record.

Tuckerton, N. J., Nov. 27, 1906.

HON. EDMUND W. WAKELEE,
Demarest, N. J.

Dear Sir:

I herewith hand you a copy of a resolution passed at a meeting of the Oystermen held in Tuckerton on the 24 ult. Kindly advise me if you can arrange to give our people a hearing.

Yours very truly,
E. A. HORNER, JR.

Whereas the natural oyster grounds of the State of New Jersey have, for generations, been devoted to the use and privileges of the residents of the State, either as oystermen or tongers, and

Whereas the State of New Jersey has by laws protected these natural beds during certain portions of the year, and further fostered the industry by expending large sums of money in placing shells thereon to aid in the propagation of oyster seeds, and

Whereas the Riparian Commission of this State has sold certain portions of these grounds to individuals and corporations, thereby decreasing the acreage of the natural oyster beds, and

Whereas the sales already consummated and the continuance of these sales to individuals or corporations will result disastrously to the best interests of the oyster industry of the State of New Jersey, as well as jeopardizing the interests of thousands of individuals, now therefore, be it

Resolved, That the legislative committee appointed to investigate the granting of riparian lands by the State, be requested to hold a meeting at Toms River, Ocean county, at an early date, in order that those who feel the distress of the sale of these lands by the Riparian Commission may express their views, and that the Legislative Committee may become thoroughly familiar with the importance of preventing further sale of these lands and to recommend such steps as will be necessary to regain State possession of those already sold.

CHAIRMAN WAKELEE.—I am informed there are certain gentlemen here who desire to be heard by this Committee. There have been no witnesses subpoenaed for this hearing and we will now give an opportunity to those who desire to voluntarily appear and be heard.

MR. E. R. WALKER, of Trenton.—Mr. Chairman and Gentlemen of the Committee. I desire to be heard, if I may be permitted, in behalf of the Atlantic City and Ocean City Railroad Company. That corporation is organized under the General Railroad laws of this State and has commenced the work of construction of a railroad between Atlantic City and Ocean City. It has to cross Great Egg Harbor bay, which is a tide-water body, and under section 16 of the General Railroad act, is required to obtain the consent of the Riparian Commission before it can build its bridge. An application in due form was made to the Riparian Commission of this State on the 9th of November last for this permission. Accompanying the application were detailed plans of the bridge proposed to be constructed and a copy of the consent of the Secretary of War given to the construction of the bridge according to the plans, it being necessary, as the Committee doubtless knows, that the permission of the War Department shall be obtained for a construction of that kind.

The application to the Riparian Commission was met by the assertion of its president, and the members too, for that matter, that because of the fact that your honorably body, investigating under legislative authority, that Commission had been requested, the Riparian Commission, not to make any grants, practically as I understand it, not to grant any licenses, practically, further, not to transact or do any business pending your inquiry and report to the Legislature and possible legislative action thereon. The Riparian Commission, while disposed to entertain our application, felt constrained by reason of your injunction upon them to deny it and not to consider it unless with your leave and permission.

Now, of course, what you have done is a question of policy, doubtless, the reason for it being sufficient unto yourselves. As I understand, you have discovered that a great many riparian rights have been granted in fee to various persons and corporations for perhaps inadequate consideration.

Now, this application to the Riparian Commission was not an application of that sort. It was not an application for a grant of valuable riparian lands upon some tide-water for the purpose of building some piers or docks, or for some other commercial purpose, but simply an application, for not practically a riparian grant, but for the permission that the sixteenth section of the General Railroad act, which is that every railroad organized under that act may build bridges over the tide-water, stream or bay—

MR. WAKELEE.—What is the distance to be traversed by this course?

MR. WALKER.—It is quite a long distance, two miles; there are three draws, three channels, two draws, as I understand it.

MR. WAKELEE.—How many channels?

MR. WALKER.—Two channels and a draw in each channel. Now, we are fortunate enough you see to have had the War Department pass upon the ground of the practicability of this structure and the necessity for non-interference with navigation, so when the War Department of the United States has put its stamp of approval upon this application, has said that our draws are sufficient, our proposed structure is no interference with navigation, we come before you, it seems to me well supported.

SENATOR MINTURN.—How far have you got along with this work? Are you awaiting some action to be taken on this matter?

MR. WALKER.—They say they have let some contracts and are now awaiting the determination of the Riparian Commission to let others and if they obtain that consent they will build this structure between now and next spring and be ready for traffic next spring, whereas, if delayed, they will be unable to undertake the work until spring comes.

SENATOR MINTURN.—The difficulty in my mind was, and I think I wrote you about it, while asking for a license as you term it under the 29th section of the General Railroad act, it provides that it shall be practically a conveyance.

MR. WALKER.—The sixteenth section.

SENATOR MINTURN.—Is it the sixteenth? Of course that comes within the prohibition of the Committee at the hearing at Jersey City where we resolved to ask the Commissioners to make no further

conveyances; if that is a mere license, it might change the aspect.

MR. WALKER.—The word "conveyance" is mentioned in the 16th section of the act and it contemplates a permission, it says not until the permission of the Riparian Commission shall be had may this structure be erected, and then it goes on and says "shall convey them the right upon such compensation as shall be fixed upon."

Now, here are two classes of riparian grants, one a conveyance in fee, the other a license; one a fee simple absolute of some shore lands for commercial purposes which you may strictly so call a mere permission or conveyance, if you choose so to call it, and the other to a railroad company for the construction of a bridge or pier.

Now then, of course, I submit this with deference. What you have practically done is this : you have temporarily made it impossible for the Riparian Commission to execute its office with reference to considering applications from railroads, railroads given charters by the State and permission allendi to cross over tide-waters and bays, the right to go and construct a road from terminus to terminus ; this is our situation here, we have this two miles of water way intervening and there is a necessity of constructing this long tunnel bridge and we have to apply to the Riparian Commissioners and when we apply to them they are powerless to act at all, because forsooth, your honorable body has requested these gentlemen not to further execute their offices. This is a great hardship to these people, these gentlemen who have organized this railroad.

SENATOR MINTURN.—Is that a new route?

MR. WALKER.—This is a new route.

SENATOR MINTURN.—I understood it was a continuation of a system already in existence.

MR. WALKER.—Practically so ; yet this part of the road is new.

ASSEMBLYMAN BARBER.—Is it over private right of way ?

MR. WALKER.—Entirely.

SENATOR MINTURN.—Would it be exclusive grant to this company so that parallel roads could not be built across anywheres near that?

MR. WALKER.—I am not prepared to answer that.

SENATOR MINTURN.—I am only speaking for myself, but I would like to hear you as to the question of the nature of this contract or license. Would you consider a license limited to a number of years?

MR. WALKER.—After conferring with my clients I desire to say that what they desire, of course, if they can obtain it, is a grant

which seems to be contemplated by the 16th section of the General Railroad act, which would be a perpetual grant of the right; but they are willing to accept less than a grant in fee, less than a perpetual grant. Unfortunately, their bonds run for a period of thirty years and if it were deemed expedient by your honorable body that a grant be less than for fee or perpetual grant, they would like a license for thirty years, the period from which their bonds run. They would not want to take it for less than that. It would not be acceptable to them.

SENATOR WAKELEE.—What is it you are applying for. Which one do you want, the grant or license?

MR. WALKER.—It seems to me under the wording of the act it is a grant that is intended. The act says "conveyance." The word conveyance is used in it. It says without the consent of the Riparian Commission a railroad company cannot construct a bridge or viaduct over any tide-water or basin or tide-water stream and then it goes on to say that land for such purpose shall be conveyed to them upon such compensation being made as in the judgment of the Riparian Commissioners shall be deemed reasonable and proper. I agree with Senator Minturn that that contemplates a grant.

ASSEMBLYMAN CROWTHERS.—I would like to say, if you will permit me, you spoke of coming before the Commissioners with the approval of the War Department. I would just like to say that that seems to me, in one or two instances I have known of, that the War Department's opinion is very trifling on such affairs. We were having a bridge built over a mile long which had the approval of the War Department, the plans and specifications were placed on exhibit and bids opened and contracts given with the approval of the War Department and permission given, and after that bridge was fully constructed, completed, they have now ordered us to take up 250 feet of it and replace it with a steel structure. It looks as if the approval of the War Department was not always exactly safe. It seemed very peculiar, once approving our plans and allowing us to expend that amount of money, that we must destroy 250 feet of it and that must be done by their orders before December 1st of this year and proceed to replace it with 250 feet of steel.

MR. WALKER.—I think myself that is a singular thing and were it not for the fact that you cannot sue the Government, cannot sue the sovereign, it seems to me there should be some cause of action. I generally supposed that the War Department approved only proper plans for proper structures.

ASSEMBLYMAN CROWTHERS.—I am telling you this as you may have to take your's down in a year.

MR. WALKER.—Well, that would be a matter between us and the War Department. I would like to introduce Mr. Wellerstein.

ASSEMBLYMAN BARBER.—Have you given any consideration, Mr. Walker, to the ownership of the State to these lands? Suppose the Committee and the Riparian Commissioners should absolutely refuse this grant, would they be within their legal rights?

MR. WALKER.—Since you ask me the question, my judgment is that the duties of the Riparian Commissioners are practically ministerial in this matter, to make the grant on proper terms, or give the license.

You see the General Railroad act says that we may construct our road from terminus to terminus and now then I apprehend it is not possible for that subordinate body to absolutely forestall the building of anything contained in the act. For instance, suppose we assume that this application was made to the Riparian Commission for this grant or license under this section, and was absolutely refused, the courts would undoubtedly mandamus them to consider and execute their office and suppose, in so doing they then refused any grant at all, or, for instance, made the compensation to be paid for the grant so high as to be practically and physically impossible for us to comply with it. I think the courts would then substitute its conscience for the conscience of the Commission. Do I understand you rightly?

ASSEMBLYMAN BARBER.—Yes.

MR. WELLERSTEIN:—I want to say, in the first place about the War Department, that the permission to the Atlantic City and Ocean City Railroad Company was upon the distinct understanding, which they always make, that any grant is subject to certain changes as may be required, and those getting the permission agree to do as the War Department asks them to do.

ASSEMBLYMAN CROWTHERS.—Don't you think in a period of less than two years they should have found that this structure would not be satisfactory?

MR. WELLERSTEIN.—It is rather strange, I am bound to admit; what we ask in this grant from the Riparian Commission is: the general railroad act uses the term not conveyance but grant. The first part of Section 16 first gives the railroad company the right to cross any navigable stream; you will find if you look at Section 16 the first part gives the right to the railroad company in absolute terms to build bridges or viaducts.

SENATOR MINTURN.—With a proviso.

MR. WELLERSTEIN.—I know, but a grant first in absolute

terms, then with a proviso that they shall not build these bridges across navigable waters without having obtained the consent of the Riparian Commissioners. The word "consent" is used and then it says that the Riparian Commissioners shall make the grant and fix the compensation.

SENATOR MINTURN.—It authorizes a conveyance under such compensation as shall be fixed, and the question in my mind is whether the word "convey" relates to the consent or to the land, to convey the consent, or to convey the land. I think the word convey refers to the land.

MR. WELLERSTEIN.—What they have actually done in other railroad cases, they have given both the conveyance of the fee and the consent to the construction of the bridge; in the case where a railroad is built across the thoroughfare at Atlantic City they granted a fee from the high water land out a certain distance into the stream, into the thoroughfare. I think that is a grant in fee of the riparian rights for the rest of the way across to the Atlantic City side and a license to construct the bridge; it does not say perpetual or otherwise, simply a license to construct.

ASSEMBLYMAN CROWTHERS.—I had an intimation that everything granted, in the nature of a bridge across such a water way, had been in the nature of a license.

MR. WELLERSTEIN.—The grant or conveyance to construct the bridge has invariably been given, as far as I know, and I have been connected with four or five cases. We are not asking for a grant of the fee at all, no fee from the high water mark out to the sea, but a license to construct the bridge.

SENATOR MINTURN.—You do not claim to own the ground?

MR. WELLERSTEIN.—No; that land is owned by others who have consented.

SENATOR MINTURN.—The riparian right, has that been granted?

MR. WELLERSTEIN.—On one side I think it has. On the Somers Point side that riparian right has been granted to the West Jersey and Seashore road.

SENATOR MINTURN.—But not on the Ocean City side?

MR. WELLERSTEIN.—On the Ocean City side there has no grant been made of the riparian right.

SENATOR WAKELEE.—Who is the owner?

MR. WELLERSTEIN.—The West Jersey & Seashore road.

SENATOR WAKELEE.—The Ocean City side?

MR. WELLERSTEIN.—The Ocean City side.

SENATOR WAKELEE.—They have consented?

MR. WELLERSTEIN.—They have consented to the construction of the bridge and their consent is attached to our application.

SENATOR WAKELEE.—There is no question of the ownership of the uplands, no question of conflicting interest?

MR. WELLERSTEIN.—Absolutely nothing; the West Jersey and Seashore has consented to our application. All we need is the consent of the Riparian Commissioners. If the Committee should be averse to the granting of an absolute or perpetual consent, we would take the other. May I say one more word on the limited license? I only want to say, if a grant is made of a limited license, or a license for a limited period of time,it should be on terms providing for a renewal of the license for a further time.

SENATOR WAKELEE.—I think that is only fair. Have you gone into the subject sufficiently to say whether you think the Riparian Commissioners have a legal right to give you a license with the option of a renewal?

MR. WALKER.—They have, I take it; the general rule is that if a grant can be made of the fee it can be made for a less period.

SENATOR WAKELEE.—The larger includes the lesser?

MR. WALKER.—No doubt about that.

ASSEMBLYMAN CROWTHERS.—Would this bridge where it crosses interfere with the upland, with commercial enterprises desiring to use these riparian rights?

MR. WELLERSTEIN.—It would not.

SENATOR WAKELEE.—Are there good channels from both sides of the main land?

MR. WELLERSTEIN.—In answer to that question if I may say this. The Government was very particular as to the protection of the interests of navigation, and I could very well appreciate the value of your remarks when they ordered that bridge taken down after being up two years. We made surveys and sent to the Government as a matter of record, and it was at a meeting where there were representative interests of all kinds in this enterprise, because they were very anxious for the railroad and they wanted these bridges.

MR. THOMAS A. DAY, of Plainfield.—We would like to be heard. Mr. Thompson was present before the Committee and testified and asked for a grant on the east shore of the Passaic river. Mr. Thompson asked for a grant of about 1,000 feet, I think, on the east bank of the Passaic river, part of the Hackensack meadows. I think the application is a meritorious one, and I think the Riparian Commissioners so regard it, if this Committee could see its way

clear in the case of this application on merit to withdraw their request that no more grants be made.

SENATOR MINTURN.—Where does this land lie?

MR. DAY.—Part of the Hackensack meadow and part on the east side of the Passaic river.

SENATOR MINTURN.—How near to Newark?

MR. DAY.—Practically across the river from Newark. Mr. Wilbur C. Fisk is here and he is interested in it; if the Committee would like to hear him he would be glad to address you.

SENATOR MINTURN.—What do you propose to do?

MR. DAY.—Build factories. Mr. Thompson proposes to build a factory for the purpose of manufacturing plaster of paris.

SENATOR WAKELEE.—One point this Committee would like to hear you on is whether you are injured or damaged by delay. Why rescind the resolution passed?

MR. DAY.—It is a matter of moment. Mr. Thompson has already testified pretty fully in regard to this matter and what Mr. Fisk can tell the Committee if they care to hear him is what the Hackensack meadow is and what the Company is interested in trying to do.

SENATOR WAKELEE.—How can you be damaged between the interim, between now and next March, when the Legislature acts on this matter?

MR. DAY.—I think the Committee ought to take into consideration that this whole matter of riparian grants is held up, not merely until the Legislature meets, but until they take some final action; it holds up not only grants, but holds up the making of leases, the whole question.

SENATOR WAKELEE.—We do not object to leases.

MR. DAY.—I understand it does.

MR. WAKELEE.—The Committee's request to the Riparian Commission was not to make any conveyance at all. In regard to the leases we do not have any serious objection to them.

MR. DAY.—Of course the policy cannot be definitely determined until the Legislature acts on it. It is simply a question for the Committee to consider.

WILBUR C. FISK, of New York.—Mr. Chairman and Gentlemen: I come here today feeling it might be of interest and might lend some weight to your decision to know the exact status of affairs of the Hackensack meadows in the plot of land owned by the Hackensack Meadow Company, which I think you are well acquainted with. You will recall that it begins at the junction of the

Hackensack and Passaic rivers where they enter into Newark Bay, and runs north from there and bounded on the east by the Hackensack river and on the west by the Passaic and is a tract of about 3,500 acres.

SENATOR MINTURN.—How about the north?

MR. FISK.—It runs north approximately three miles; it is approximately a six-mile water front.

SENATOR MINTURN.—It runs to the county road?

MR. FISK.—Which road do you refer to, the county road, the turnpike?

SENATOR MINTURN.—The Paterson turnpike.

MR. FISK.—Almost to the Paterson turnpike, north to Saw Mill Creek; that is the completion of the northern boundary. This land is high water, it is nearly all washed.

SENATOR MINTURN.—Does it go north of the Lackawanna railroad tracks?

MR. FISK.—It goes north of the Erie also and north of the new line of the Pennsylvania railroad from Harrison to make their terminal at 134th street; goes through the tunnel.

The process to make that land valuable for development has been to fill it to a point about three feet above high water; this has been done by diking, throwing dikes up along each shore to hold the material in and then by means of pump-dredges to pump the material ashore. This material for the most part has been procured, and in fact all of it to date except the limited amount which naturally came out of the river, has been procured from the dredging operation going on in the channel. That material was taken there and dumped in the river and pumped there by the pump dredges. So far, about 150 acres of land has been made. It is a very expensive operation, running up as high as $2,000 an acre, we will say from $1,200 to $2,000 an acre, and if we fill on an average of six to seven feet, you can see, gentlemen, that we need some assurance in going ahead with a proposition like this, that the land can be sold and we have come up against this situation that every intending purchaser, every man considering it, comes back to, the riparian situation. If we buy along there, what do we get? For months we have had to say, "Gentlemen, we can't tell you what you get; may be you can get this grant in fee; we will get you whatever we can, we will do our best," and the answer has come back as with Mr. Thompson, "we can't afford to buy this land and put on here expensive improvements in the way of buildings and machinery with the possibility that in the future when our riparian right expires that we would have to possibly renew that lease at some prohibitive figure. In the meantime, we have made

developments and naturally the tendency would be for a higher value on the renewal. We can't afford to put permanent developments of an expensive nature on these lands," and they won't do it. We have a number of people negotiating now, and that is as far as we can go. They want to know whether we can give them any assurance of the riparian rights, and, of course, we can give them none.

SENATOR MINTURN.—Suppose your purchasers would be assured they would get a lease upon the expiration of the leases now granted, say at the end of twenty-five or fifty years, at a figure to be fixed by arbitration in case he and the state could not agree.

MR. FISK.—That would make a difference, of course, but I think the clearest way to understand a question like this, is for the moment to put yourself in the other man's place. You, gentlemen, consider now, that you are a Committee, not of the State Legislature, but a Committee of a large manufacturing concern, appointed to decide whether or not you will locate a factory at that given point. Think of it that way around. Now, you find out that you have got water facilities, railroad facilities, five trunk lines crossing this property, you have got tide-water facilities, you have got everything that you could ask, you have got your market here, but the question is now as to my docks, I got to build docks, and got to build buildings. Can I get this land in fee, the riparian rights and make permanent improvements? Naturally, if I get it in fee, I would decide on this, other things being equal, but when the question of leases comes in you would very likely go somewhere else. You can go into New York State.

SENATOR MINTURN.—Where in New York State can you get the facilities this property offers?

MR. FISK.—On Long Island, Staten Island. Of course these facilities can be made better than any; there is no doubt about that.

SENATOR MINTURN.—I don't think there is a place around Manhattan Island that has the facilities that New Jersey affords.

MR. FISK.—No, sir; I will agree with you, not as good, but there are other things that come in; take the Thompson case. At this moment he has been negotiating with my company for some weeks back for a piece of this property. If you want that piece of property, why don't you sign a contract for it, I said. He says I will not take it if I don't get my riparian rights in fee. If I get them I want that piece of land; if I don't, I don't want it.

SENATOR MINTURN.—Isn't that due, in your judgment, largely to the fact that it has been the policy of this State for years back to make conveyance in fee and that a party now dealing with

you are likely to expect that will be the future policy of the State?

MR. FISK.—No, sir; I can't answer that yes or no. Naturally a man expects to get what he has been accustomed or other people have been accustomed to, that is naturally so. I don't think so. Mr. Thompson has other property; he can go other places; it isn't absolutely necessary that he have this piece; he can go to some other place; he don't have to have it.

SENATOR MINTURN.—Isn't what the people like Mr. Thompson want, only security for the improvements?

MR. FISK.—He certainly wants security.

SENATOR MINTURN.—That is all any man wants, Mr. Fisk. If he has got it in fee he has got a security. May I ask what your idea as to a length of a lease should be?

SENATOR MINTURN.—Say fifty years with a right to renew. I am only throwing that out; that is my opinion.

MR. FISK.—I understand, sir.

MR. MINTURN.—The right to renewal, the consideration price of renewal could be agreed upon by arbitration if the State through the Riparian Commissioners cannot agree with the lessor. There is nothing objectionable to that. Go down town in New York city and the lands around Trinity church are never sold; they are all leased and some of the sky scrapers are on those leased lands. All those men asked for their outlay is simple security, that at the end of the leased period they will get a renewal of the lease either by agreement or arbitration.

MR. FISK.—That is quite true, sir. Take it in the case of this particular piece of property to which I think it is quite applicable because it has an extended water front. This piece of property can be developed. It is now of comparatively small value. It can be developed and will be a taxable asset for the State of very large proportion. My position is that they will make more of a piece of property of that sort sold in fee, the riparian rights, thereby encouraging development and increasing the taxable value; they will get the benefit from that on that increased valuation. As the city builds up the property naturally increases.

SENATOR MINTURN.—The tendency on factory plots is not to increase the taxes any more than necessary, and the disposition in this State and in all states is to be very lenient with factories.

MR. FISK.—That is a question of policy to the State, I think. It don't conflict with my argument that it increases taxable value. That very factory brings with it a very large increase; an increase in population, an increase in the necessaries of life, necessary developments of the land adjacent, not used by the factory. The factory

is not therefore directly, but indirectly, responsible for large increases in taxable property.

SENATOR MINTURN.—What is the depth of the water there?

MR. FISK.—In the Passaic river, average about 12 feet. The government is now making a survey, I believe; there is a hearing in the matter in two or three days in Washington to discuss a 20-foot channel through the Newark bay right up to Newark; on the Hackensack side the river borders on most of our property, is along most of it as far north as the Pennsylvania railroad, averages about 20 feet in depth, is easily dredged out. I might say, that if we are granted riparian rights on our land, and which we are prohibited in a great measure from doing now, our purpose is to have our dredge dredge those channels to a much greater depth. We are glad to do it because we can offer our lands to people, saying we have a deep water way, so our lands are available to vessels. That is one of the results of the development of this property. It would be a deep channel on the river bordering the property. Another point and then I am through.

You say what is the harm of a delay of three or four months' time in this matter. It really means that three or four months means a year's time; it don't mean three or four months, it means a year's delay in this development.

These are the months when all such enterprises are making their plans, getting ready to go right to work the minute spring opens. Now, then, they are not going to make those plans, with the uncertainty if they don't know what we are going to do, what we are going to get, or what they are going to get. They don't make the plans until the horizon is clear. If the Hackensack Meadow Company cannot see its way clear that they would be able to sell its property, they are mostly certainly not going to fill it. We are making our plans now and if we get some encouragement, we can say to people, "you buy the land and you can get the riparian rights," we feel that this matter is so you can go and get them on a proper application. The development would then go ahead, and we should go ahead. It is one of our ideas, on the other hand, not to sell every bit of that shore front. We mean to reserve a certain portion for the business and piers, so that those who settle there will always have access to the shore. There is nothing philanthropic about that, we have got to do it; if we don't do it we simply tie up the future operations of the land because one of the great problems there, one of the great undertakings, is the tidewater.

MR. MINTURN.—Have you made a map of the land?

MR. FISK.—We have made a tentative map.

THE CHAIRMAN.—That has all been before the Committee.

MR. FISK.—That has all been before the Committee. I think Mr. Thompson presented it. I have another copy, but I didn't present it ; he was here.

SENATOR WAKELEE.—He went into the matter in detail.

MR. FISK.—I think he did, Senator Wakelee.

SENATOR WAKELEE.—Do your company do the dredging and excavating on the Passaic river near the Pennsylvania railroad ?

MR. FISK.—Yes, sir.

SENATOR WAKELEE.—You did that draining there or excavating from the river ?

MR. FISK.—Yes, sir ; we did that.

SENATOR WAKELEE.—You pumped that up ?

MR. FISK.—I don't know exactly ; we pumped from the channel under permission from the Government. We pumped the material on there and our permission carried with it the provision that we must keep the channel open, and our dredges have been working there at the Pennsylvania railroad bridge this summer, and it is all done, the channel, and it is a better channel there now than there ever has been ; part of it is as deep as 28 feet, but that is only in a very limited portion, but it will average 12 feet right through the channel and when we originally went there it was nine.

SENATOR MINTURN.—You feel that the digging done there has had more effect than that for which the State has made large appropriations ?

MR. FISK.—I would like to be put on the record as making that statement.

The Committee then went into a conference and it was decided to hold a meeting at the Court House at Toms River at 11 o'clock on December 15, 1906, the whole Committee to be present, if possible, but a sub-committee of Senator Minturn and Assemblymen Barber and Crowthers to be present as such Committee. The Secretary was requested to reply to the communication of Mr. Horner, giving him the above information and further direct the announcement of the meeting through the newspapers, particularly the Ocean County Courier of Toms River, and the New Jersey Tribune of Toms River.

Senator Minturn then moved that the Secretary communicate with the Riparian Commission that it is the sense of this Committee that the resolution heretofore passed by this Commission at Jersey City, requesting that no further grants or leases of riparian lands be made by the Commissioners until this Committee has reported

to the Legislature, be qualified so as to permit the Riparian Commissioners, if in their judgment, they deem it at any time advisable, to make leases for a term of years of the riparian lands on such terms as they may deem advisable.

Seconded and carried, Messrs. Holcombe and Wakelee voting in the negative.

On motion the Commission then adjourned.

Toms River, N. J., December 15, 1906.

Meeting of the Joint Committee to Investigate Riparian Grants, etc.

PRESENT.

SENATOR MINTURN and ASSEMBLYMEN BARBER, HOLCOMBE, CROWTHERS and JONES.

Senator Minturn stated that the meeting was called at Toms River in response to the following letter and resolution:

Tuckerton, N. J., Nov. 27, 1906.

HON. JAMES F. MINTURN,
Hoboken, N. J.

Dear Sir:

I herewith enclose you a copy of a resolution passed by a meeting of the oystermen held in Tuckerton on the 24th inst. Kindly advised me if your Committee can arrange to hear our people.

Yours very truly,
E. A. HORNER, JR.

Whereas, The natural oyster grounds of the State of New Jersey have, for generations, been devoted to the use and privileges of the residents of the State, either as oystermen or tongers, and

Whereas, The State of New Jersey has by laws protected these natural beds during certain portions of the year, and further fostered the industry expending large sums of money in placing shells thereon to aid in the propagation of oyster seeds, and,

Whereas, The Riparian Commission of this State has sold certain portions of these grounds to individuals and corporations, thereby decreasing the acreage of the natural oyster beds, and

Whereas, The sales already consummated and the continuance of similar sales of these lands to individuals or corporations will result disastrously to the best interests of the oyster industry of the State of New Jersey, as well as jeopardizing the interests of thousands of individuals, now therefore, be it

Resolved, That the Legislative Committee appointed to investigate the granting of riparian lands by the State be requested to hold a meeting at Toms River, Ocean county, at an early date, in order that those who feel the distress of the sale of these lands by the Riparian Commission may express their views, and that the Legislative Committee may become thoroughly familiar with the importance of preventing further sale of these lands and to recommend such steps as will be necessary to regain State possession of those already sold.

Mr. E. A. Horner, Jr., was present and conducted the examination of the witnesses.

ARNOLD CRAMER sworn. Examined by Mr. Horner.

Q. Where do you live? A. New Gretna, N. J.

Q. What is your business? A. Oyster planter and shipper.

Q. On what particular ground do you operate to cultivate oysters or catch oysters? A. Mullica river, Barnegat bay, and in the Gravel land, up the Mullica river.

Q. Are they public beds, leasable? A. They are set apart for public beds, natural grounds, they are natural beds, most of the grounds; planted shells there for the spat to catch to; and there are clams, too.

Q. How long have you operated or worked upon those grounds? A. Ever since I was a very small boy. I commenced going with my father, and have gone ever since.

Q. Just state, Mr. Cramer, your operation from year to year, what have you done and what are the conditions today? A. In regard to the riparian grant that there is there now, there is more than one, there are three in the river. Those grounds are natural grounds, there are natural beds there and there are clams too.

Q. Whose riparian grant? A. The one there; Sooy's particularly. There are natural beds there; it is a foot and a half high from the bottom.

Q. Where? A. Up near Swimover and near Goose Cove.

Q. Are they inside of the line? A. Yes, sir; they are inside of the line that these people have staked up, and there are clams there, for I have caught them myself.

Q. Did you ever oyster on this land? A. I have caught two years ago, the first week in October, that is, 1904, I caught a hundred bushels three days in succession, and after that they began to get scarcer and get down to ten bushels a day; but I caught three hundred bushels three days right in succession.

Q. That was prior to the grant? A. They claimed to have the grant then.

SENATOR MINTURN.—Mr. Horner, have you a map showing the location of this grant?

MR. HORNER.—No, I have not. I don't know it myself; they tell me there is a grant there.

BY SENATOR MINTURN.

Q. Tell us where it is. A. This grant is between Kimbo Point—the Sooy grant—and Oyster Bed Point. That is according to the way the stakes are set. This is in Atlantic county, Ocean or Atlantic.

SENATOR MINTURN.—Mr. County Clerk, have you a map in your office showing the location of these grants in Barnegat bay? He is speaking of places that I don't know anything about, and I presume the other Commissioners don't know anything about them.

MR. HORNER.—I have no map; only this crude drawing.

BY MR. HORNER.

Q. You have always known these grounds where the grants were made to be public seed grounds?

A. Ever since I was a little boy I have worked more or less around that shore every year, some years it would be big oystering, where a man could catch 50 or 100 bushels, and another year we might catch 10 bushels, just depending upon the growth. Some years they catch more than others; some years there is no set and you can't catch them.

BY SENATOR MINTURN.

Q. Your point in this statement that you are now making is, that this land that was conveyed by the Riparian Commission was a natural oyster ground? A. Yes, sir.

Q. Containing both clams and oysters? A. Yes, sir.

Q. Over which you fishermen down at Tuckerton fished and earned your livelihood? A. Yes, sir; we depend upon the natural privilege for getting our living.

Q. And this grant was made without any notice to anybody? A. I did not know anything about it. I saw the stakes when we went to go to work, and they forbid us, but we didn't stop; we took the oysters the first year.

Q. But when you do that, you are likely to be arrested under the oyster law? A. They told me so. I was unmarried then, and I thought if they took me, all right. I had to make my living and so I went there, but they never arrested me afterwards.

BY MR. BARBER.

Q. How wide a tract of land is that? A. Some places I judge it is nearly a quarter of a mile, and other places not over a hundred feet from the meadows. The meadows curve in and make a cover and they run the line pretty straight from point to point. They have taken in all the shoal water there is, so that a man has got to get right out in thirty foot of water, and he can't do much, and of course that kind of bottom would not be any use to them, and they take it as far as it is a benefit to the public.

Q. How long ago was the grant made? A. It has been two years this last October since we were forbid working there. I don't know when the grant was made, but it has been two years since 1904, October.

BY MR. HOLCOMBE.

Q. What is the business of the people who got the grant? A. Those people are using it to propagate seed oysters, plant shells and raise oysters and take all that is there; they would not throw any away.

BY SENATOR MINTURN.

Q. Where is this grant? At Tuckerton? A. No; in the Mullica river below Tuckerton.

Q. Is it in the river or down by Great Bay? A. The river empties into the bay. It begins at about the mouth of the river.

Q. How much of a grant is it? A. I judge a mile and three-quarters long.

Q. That is along the river? A. Yes, sir.

Q. Who owns the land back of the grant? A. I suppose the parties that holds the grant, Sooy and Company.

Q. Is Sooy in the oyster business? A. No; he was Shell Commissioner previous; he was a Commisssioner, and then about the time his commission ran out he sprung this thing on us people.

Q. While he was Commissioner he obtained this grant, is that the idea? A. I think he just about got it under way about the time his commission ran out, if I remember right.

Q. You don't know whether he is in the oyster business? A. He is County Clerk of Burlington County at the present time.

BY MR. HORNER.

Q. You bought a license to work on this ground? A. I bought my two dollars and a half license for to work on all the natural ground on the Mullica river, or the State of New Jersey.

Q. The State used to plant shells on this ground? A. Yes, sir.

Q. Did you ever know the State to plant any within these lines? A. Yes, sir; Mr. John Johnson planted shells there once; he planted his whole appropriation there one year, which meant about five or six thousand bushels of oysters he planted there one year.

SENATOR MINTURN.—Has Mr. Sooy been before this Commission?

MR. HORNER.—Yes.

SENATOR MINTURN.—Then we have his testimony?

MR. HORNER.—Yes.

BY MR. BARBER.

Q. Has Mr. Sooy since he obtained that land, has he given employment to any men on this bed? A. Yes; he has a man there as a watchman to look after his ground; he has also at that point dug three ditches, he dug through his meadow, he has a point and he cut through the point and dug the ditches across. Of course, we don't care whether he raises oysters two feet deep; that is his property. He has made this ground and he has had men there at work digging ditches, and he has spent a lot of money there and he has planted some shells; and, of course, the men can sell their shells anywhere and get five cents a bushel the same as he gives.

Q. Has there been oystering done in those beds by Mr. Sooy? A. Yes, sir; they oystered there last summer.

Q. Did those men working for Mr. Sooy and taking advantage of the work they had done, did they obtain from those beds any more oysters than were obtained before? A. I will explain that to you: the more shells planted the more oysters will grow, understand, but where hundreds of men have been making their living, to get this down to a one company affair it is hardly right; it don't set well with us people where we have been used to making our living, people coming there to hold them up.

BY SENATOR MINTURN.

Q. How many people are down in that neighborhood, in Tuckerton and that neighborhood, who have earned their living by the oyster industry? A. Two or three hundred people in Tuckerton and Port Republic, surrounding that country, working in that bay, following that.

Q. With their own boats? A. Yes, sir; they have their boats.

Q. They were independent, were not employed by anybody? A. Independent, the more they catch the more they make. If they catch a hundred bushels they sell them for thirty-five cents; there is $35, where if they are working for somebody else the company will give them about $2 a day.

BY MR. BARBER.

Q. They can make more working independently? A. Yes, sir.

BY SENATOR MINTURN.

Q. Where did they sell their oysters? A. The oysters are planted; I am an oyster planter myself.

Q. What did you do with the oysters you caught? A. I planted them until they got marketable, and then I sold them.

Q. Where is the market? A. All over; Pennsylvania, New Jersey and New York.

Q. Did you ship them on the railroad? A. Yes, sir.

Q. Up to New York and Philadelphia? A. Yes, sir.

BY MR. BARBER.

Q. You say you plant those oysters when you catch them; did you have any agreement with other oystermen, that any oysters you should plant in certain localities, the others shall not get oysters there? A. We lease our grounds, our planting grounds; we lease them off the State Commission, the Oyster Commission.

BY SENATOR MINTURN.

Q. What did you pay for that lease? A. So much per year.

BY MR. BARBER.

Q. And that gave you the exclusive right for planting? A. Yes, sir; this is not neutral ground we plant on; oysters don't hatch and grow there. There are two different kinds of ground, one to plant and another to raise big oysters.

MR. HORNER.—Where they plant these no oyster ever propagates; the spat don't catch there.

A. You have to transplant them. This is the natural seeding ground, seeds are planted and we get them and plant them and grow them to big oysters. You know where they set solid year after year, you could not do anything with them unless you transplanted them.

BY SENATOR MINTURN.

Q. What has been the effect on the community down there of these grants of land? A. It took that amount of oyster privileges away from them. The year this was granted, I told you before, I caught a hundred bushels three days in succession. Those were worth 30 and 35 cents per bushel, so you see what that amounts to.

That is what I did myself, and other men caught as many as I did, because I am a little fellow, and some men caught a great deal more.

BY MR. HOLCOMBE.

Q. What do you pay to the State for the land you occupy? A. For planting oysters?

MR. HORNER.—You refer to the place where he caught the oysters?

MR. HOLCOMBE.—Yes.

MR. HORNER.—He don't pay anything except the license fee.

Q. What is that? A. Two dollars and fifty cents. We pay that fee and that has been up to the last two years. That goes back to the State and they plant shells with it and we reap the benefit of that, and we propagate seed oysters on it. By giving this riparian grant it has taken the privilege away from a good many men where they have been earning their living.

BY MR. BARBER.

Q. Has there been any other riparian grant in Ocean county? A. There are three on that river, Mr. Gail, Mr. Sooy and a man named Chew.

Q. They were planted prior to the Sooy grant? A. Yes, sir.

Q. How long ago were they planted?

MR. HORNER.—I think they were after the Sooy grant.

SENATOR MINTURN.—Do you remember how much the State received from this grant on the Mullica river?

MR. HORNER.—I think $1,200.

SENATOR MINTURN.—Do you know the extent of the grant?

MR. HORNER.—No. I don't.

A. I think I have read in the papers it was $1,000 for the grant and Mr. Gail's was $250.

SENATOR MINTURN.—It has been testified to by Mr. Sooy, I understand.

E. W. GIBERSON sworn. Examined by Mr. Horner.

Q. Where do you live? A. In Atlantic county.

Q. What is your buisness? A. Oysters.

Q. Are you acquainted with the oyster grounds on Gravel Land and Mullica River? A. I am.

Q. Tell these gentlemen what you know about the conditions there up to date. A. Well, today I can't work where I used to work some years ago; they have staked in and planted in as good a ground I guess as we have got there. Now, above Swimover in Round Point, 25 feet, I was there last October, it blew hard south-

west ; I could go right where they staked it out and I went to see whether they had planted any, but I could go there and catch 25 bushels of oysters with 25 feet tongs,where I am not allowed to work. It blew hard and that drove me off and I had to quit work.

Q. How long have you worked on this ground ? A. 25 years.

Q. Within these lines, where this grant is supposed to be, are there any natural beds there, to your knowledge ? A. There are.

Q. And you could have worked on them ? A. Yes, sir.

Q. How near to the shore are the beds ? A. They are not far off, because around Swimover it is deep.

Q. Is it not a fact that the oyster beds reach up to the shore ? A. Yes ; they reach pretty close to the shore. I worked clean to the shore, and have had the tide down, and been up the same season and caught a great lot right near the bank.

Q. Did you pay for a license to work there ? A. License for working all around there. It knocked hundreds out of a livelihood to benefit one party.

Q. In those twenty-five years you have had the privilege of working that ground until this grant was made ? A. Yes.

BY SENATOR MINTURN.

Q. How did this oyster ground compare with the other oyster beds around there, was it superior ? A. No. I don't know that it was better than any other ; it was where you could go when it blew but you could not get off into the stream further. It was near the shore, you could go on one side and then on the other and make a lee like.

BY MR. HOLCOMBE.

Q. Were you notified that the grant was to be made ? A. No. I didn't go last year, and this year I found I was knocked out and could not work there.

Q. Who prevented you ? A. I don't know one man from the other. I was a boarder there, and the man who dug the ditches told me, and he was talking about these oysters. He tried to raise them in these ditches and did spat them, but they would not grow, they died, and he told me about having these outside, and then they had notices to keep you off.

BY SENATOR MINTURN.

Q. Is this oyster land near the mouth of Mullica river ? A. I guess that is what you call it. I don't live up there. I live down toward Absecon, and come up there towards the fall to gather some seed for planting purposes.

Q. Then you take the seed down where ? A. Catch it and plant it.

Q. Where? A. Down in Absecon waters, down near Absecon river, Atlantic City, not far from there. My market is Atlantic City.

BY SENATOR MINTURN.

Q. That is permitted, is it not, under the oyster regulations? You can take seed down to Atlantic City?

MR. HORNER.—Yes; you can take it out of the State.

SENATOR MINTURN.—Is that to the advantage of the State?

MR. HORNER.—Well, there is very little taken out, but we have to go out to get the seed. We have to get seed in Connecticut and Delaware and Virginia, and bring it in, but we can't grow seed for ourselves.

Q. How many men that you know of have been out of employment by these grants? A. I don't know as I can answer that; I told you there was quite a lot.

BY MR. HORNER.

Q. How many men are affected? How many men gather there at the oyster season, take the last season? A. I think the last season there must have been at least three or four hundred; a big crowd.

SENATOR MINTURN.—Oystering on this ground?

MR. HORNER.—They came there and the first knowledge they had of the grant was when they came there and saw it.

A. There was a pretty good crowd.

BY SENATOR MINTURN.

Q. How many of these people that you know have gone out of business by reason of this grant? Any? A. I don't know that there has any gone out of business; still working, but ain't much to do up the river now.

Q. Where do they work? A. They go around different places; they come from other places and then go back. Some work at clamming and some work on land around and go there in the fall when the season comes in, expecting to make something to help along through the winter. Lots of them depend upon that; they have nothing to depend upon and when they make a good strike, they make enough to run through the winter.

Q. In the winter what do they do? A. When it is rough they can't work, but they work around among people.

Q. If the State were to make a grant of these oyster lands to various shore owners in front of whose land these oyster grounds lay; in your judgment it would put how many men out of business? A. I don't know how many all along the coast, but it would put several out of work along the Mullica river; it would put hundreds out.

BY MR. HOLCOMBE.

Q. It would hurt the oyster industry? A. Yes, sir.

BY SENATOR MINTURN.

Q. What would be the effect upon the price of oysters to the community at large—would it tend to create a trust among the men owning the land? A. I think it would; it would make it so that us small planters can't handle them.

Q. You would simply have to work for them or not work at all? A. That is the way it looks.

Q. That is all.

W. N. SEARS sworn. Examined by Mr. Horner.

Q. Where do you live? A. New Gretna, N. J.

Q. What is your business? A. Oysterman or clammer.

Q. How long have you been an oysterman? A. About eighteen years.

Q. Did you ever work on the Graveland or Mullica river? A. I have, and this grant is located upon the ground that has been established.

Q. How long since you commenced working there? A. Eighteen years since I started.

Q. What do you know about the grants being made on the natural oyster grounds in the Mullica river? A. I know that they have thrown people off; not been allowed to work on them.

Q. How do you know—who deprived you? A. The Sooy people, the people that hold the grant.

Q. About when was the grant made, Mr. Sears? A. Two years this last fall I worked there, and Mr. Sooy told me, the man that is now County Clerk, told me he had a grant, and at the same time I was catching oysters and caught from 75 to 100 bushels on the same ground, and he said they had charge of it, but they didn't do anything that fall.

Q. You say you commenced about eighteen years ago, and up to within two years ago you always had the privilege of working on this ground? A. Yes, sir; it is the most certain piece of bottom, taking one year with the other, that there is, of the natural seed beds.

Q. Are these natural seed beds near the shore? A. Some are near the shore and some are out further.

Q. Some are pretty close? A. Yes, sir.

Q. You worked on these beds previous to these grants being made? A. Yes. I have worked previous to that, ten to twelve years.

Q. Did you know the State appropriates money to seed these

grounds? A. Yes, sir; and they have oysters in their possession at the present time.

BY SENATOR MINTURN.

Q. Who? A. The people who own these grounds. The State shells were planted there and they bought the ground from the State.

Q. How long after the shells had been planted? A. The shells had caught and were on their second year when they claimed to have the grant. They were what we call planted at that time, and that was the greatest oystering that I ever had during my oystering in that section of the country.

BY MR. HORNER.

Q. And the man who owns the grant is the man who was shell commissioner at one time? A. Yes, sir.

Q. Did you ever know him to plant shells there? A. Well, now, I could not answer that. I don't know whether he did or not. I know what Mr. Johnson did.

Q. You don't know whether it was in his district or not? A. No. I could not say that.

BY SENATOR MINTURN.

Q. Has this man, Mr. Sooy, who obtained this grant, done anything to change the appearance of that land or the water? A. He has changed the appearance of the land surely; he has dredged out two or three ditches for the propagation of oysters.

Q. That is his upland? A. Yes, sir.

Q. But there has been no change of the land under water since he has obtained the grant? A. He has planted shells.

Q. Outside of that? A. No.

Q. Has he put in any dock? A. Nothing at all except a few stakes that vary from three inches to one inch in diameter.

Q. To all appearances the lay of the water is just the same except the ditches that he has dug? A. Yes, sir.

BY MR. BARBER.

Q. What would be the effect of digging the ditches—would that increase the number of oysters? A. Yes, sir; if you put shells in; wherever there has been a natural oyster bed as this has, the State set it aside as a bed of natural seed, and we paid $2.50 per year for the privilege of working there.

BY SENATOR MINTURN.

Q. What do you mean by "set aside by the State"? A. It has been established as a natural seed bed, and there is ground which does not catch. There are certain degrees of the water where it

will catch, and where it is too salty it won't catch, and in the upper part of the river it won't catch.

BY MR. BARBER.

Q. These ditches run through the upland ; they don't increase the number of oysters ? A. They would as far as the creeks go ; they would not make any difference to the oysters outside ; if they planted shells in the ditches and they caught, that would be just like so many more oysters in that section.

BY SENATOR MINTURN.

Q. They would made additional beds ? A. They make artificial beds, but that does not benefit the public.

Q. It benefits them ? A. Yes, sir ; and decreases the public privilege, taking the outside ground.

SENATOR MINTURN.—Mr. Horner, has there been any other grant beside this that you know of ?

MR. HORNER.—A man named James H. Gail and William H. Chew.

SENATOR MINTURN.—Are you going to bring witnesses as to those ?

MR. HORNER.—Gail's adjoins Sooy's.

BY MR. HORNER.

Q. Do you know of any other grant on the river except Mr. Sooy's ? A. I know of three, two besides Mr. Sooy's, and I know that if that thing is continued, South Jersey is ruined ; if the property owner has the right to claim the ground in front of him in South Jersey, while it will benefit one out of fifty, forty-nine will have to suffer from the fact.

BY SENATOR MINTURN.

Q. Were these other grants also natural oyster beds ? A. Not so much as the one Mr. Sooy has. All of them are in the district set aside as natural seed beds by the Oyster Commission.

BY MR. HORNER.

Q. Set aside by the State ? A. Well, the Commission had charge of it.

SENATOR MINTURN.—What act was that ?

MR. HORNER.—The act of 1902, the Ocean county act, and the grounds adjacent thereto in Atlantic county are set by the Atlantic County Commission.

SENATOR MINTURN.—What is the effect of setting this aside, what is the use of it if the Riparian Commissioners can come in afterwards and grant them to private individuals ?

MR. HORNER.—That is what we are trying to find out.

SAMUEL B. ALLEN sworn. Examined by Mr. Horner.

Q. Where do you reside? A. New Gretna.

Q. What is your business? A. Oyster business.

Q. How long have you been in the oyster business? A. About twenty-five years.

Q. Do you know where the natural seed grounds, the public seed grounds, are in that vicinity? A. Yes, sir.

Q. Where are they? A. Starting from the mouth of the river go up the river as far as the seed grows, I suppose all the way up, perhaps three miles, anyway.

Q. You have worked on these natural grounds how long? A. I worked there twenty-five years at least.

Q. Still working there? A. Yes, sir.

Q. All over the ground? A. No; not all over the ground.

Q. Why? A. We are not allowed to work on some of it.

Q. Why not? A. They claim I believe they have a riparian grant for it and they don't permit us to work on those grounds.

Q. Who has this grant? A. The Sooy Oyster Company,I believe it is called, has one, and Mr. Gail another, and Mr. Chew another; they are all pretty close together on the Mullica river. The Sooy grant starts at the mouth of the river and goes up about two miles, I judge, somewhere in that neighborhood.

Q. Then you have always had the privilege of working on this grant until when? A. Two years ago; two years last October.

Q. In these grants that you are speaking of are there not natural seed beds that you as a practical man would determine to be natural oyster seed beds? A. Yes, sir; as good beds as there are.

Q. How near to the shore are they? A. Some of them are right close to the shore, go all the way from a few feet off as far as the grant goes, in fact, further than that.

Q. Do you pay for the privilege of going there to work on the natural beds? A. I pay a license fee of $2.50.

Q. Now you are prevented from working on any of those grounds by reason of these grants? A. Yes, sir.

Q. Who prevented you? Did you make an effort to go there? A. Yes, sir. I went there two years ago this fall. I paid a license to work on the natural ground, and one of the men of Mr. Sooy came out and told me—I think he is interested—and told me that they had a grant for that and I had no right to work there, and if I did work there they would have me arrested, but I still kept on; of course I had no proof that he had his grant, and I thought I had as

much right to work there as anybody else. I worked there that fall, but not since. I didn't want to take any chances.

Q. How near to the shore are these beds? A. Some right close, within a few feet, and one place right along within a few feet of the shore.

Q. Then the line of this riparian grant, what is the nearest point to the shore, how near can you work to the shore and catch oysters? A. I can work within five feet of the shore and catch oysters.

Attention is called to the Oyster Commission act of 1902, page 171, and especially to section 5 in respect to the Mullica river and other lands.

SENATOR MINTURN.—Mr. Horner, I notice in reading that oyster act that there is an exception made in regard to Mullica river. It does not say that all the grounds shall be leased—

MR. HORNER.—Excepting Mullica river.

SENATOR MINTURN.—Mr. Barber asks and I desire to know, what was the object of excepting this?

MR. HORNER.—The object is to except these natural seed grounds and allow the general public to use them.

CURTIS MATHIS sworn. Examined by Mr. Horner.

Q. Where do you reside? A. New Gretna.

Q. What is your business? Q. Oyster planting.

Q. How long have you been an oyster planter? A. Eight or ten years.

Q. Where do you plant oysters? A. In the Great Bay.

Q. Have you a right to plant them there? A. Yes, sir.

Q. Who gave you the right? A. I leased them from the State of New Jersey.

Q. Do you know where the natural seed grounds of that locality are? A. Yes, sir.

Q. Where are they? A. They are up at Graveland Point and Oyster Bay Point in the Mullica river.

Q. Do you have the privilege of working the grounds in the Mullica river and on the Graveland? A. I have the privilege of working all but those riparian grants.

Q. What riparian grants? A. Mr. Sooy's, Mr. Chew's and Mr. Gail's.

Q. Who prevented you from working there? A. I have been ordered off by their agents.

Q. Did you ever work there? A. I have.

Q. When? A. Two falls ago, 1904.

Q. And within those lines, are there any distinctive natural oyster beds, other than those lands where they claim to have the grants? A. Yes, sir.

Q. You work on them? A. Yes, sir.

Q. How close are they? A. Within 30 feet.

Q. What gave you the right to go there? A. A license from the State.

Q. How much did you pay for it? A. $2.50.

SENATOR MINTURN.—Mr. Horner, he spoke of a lease from the State; the effect of that is what, to take seed oysters?

MR. HORNER.—No; only gives him a right to plant his oysters; this leased ground is separate and distinct from the ground for which the license is issued. The license is issued to give a man a right to work upon the natural seed grounds, and then he leases ground for cultivating oysters in another part, where seed oysters do not propagate; never did. He takes the seed oysters from these public grounds and plants them upon these planting grounds.

SENATOR MINTURN.—And then he cultivates the oysters upon his leased ground?

MR. HORNER.—Yes.

THOMAS J. GASKILL sworn. Examined by Mr. Horner.

Q. Where do you live? A. New Gretna.

Q. What is your business? A. In the oyster business.

Q. How long have you been in the oyster business? A. Forty years or longer.

Q. In what water do you conduct your business? A. Mullica river.

Q. Anywhere else? A. Great Bay.

Q. What do you mean, you conduct your operations in Mullica river, what do you do there? A. Gather seed oysters.

Q. Are the public seed grounds in Mullica river? A. Yes, sir.

Q. How long have you known them to be public seed grounds? A. Forty-five years or longer.

Q. Do you pay a license fee to work that ground? A. I do.

Q. And have the privilege of working everywhere and anywhere on that ground? A. I don't.

Q. Why? A. Because riparian grants take up part of it.

Q. Who have the grants? A. Sooy and Company has one, Benjamin Chew has another and James Gail has another.

BY SENATOR MINTURN.

Q. You say Sooy and Company. I understand this grant was made exclusively to Sooy. A. I believe them to be a company.

MR. HORNER.—I understand it is organized as the Sooy Oyster Company.

SENATOR MINTURN.—Somebody said he was County Clerk; he is also an oysterman?

A. He is interested in the oyster business and also County Clerk of Burlington county.

Q. Is this, his oyster business, known as Sooy and Company? A. I have always understood that.

Q. Where do they do business—where do they sell oysters? A. None of any account to sell; they sell them to people to plant the oysters in Great Bay.

Q. They sell them to men who plant oysters? A. Yes, sir.

Q. Have they any establishment in Philadelphia or New York? A. They have not; they have never come to that yet.

BY MR. BARBER.

Q. Do you know whether that ground there, that seed ground at Mullica river, whether under Sooy's ownership it would produce oysters for the general market, or as far as you can tell does their plan seem to be to produce seed oysters to sell for planting in other parts of the bay? A. That ground, as I understand, will produce both, both seed oysters and produce oysters that will go into the market. It will do both. I have done the same thing on the ground with both. I have gathered seed oysters and I have gathered oysters off of that ground that will go into Philadelphia and New York or any other market.

BY SENATOR MINTURN.

Q. Sooy does nothing more than you men did; he simply uses this natural ground for cultivating oysters, is not that all? A. Yes, sir; that is the purpose.

Q. That is all you gentlemen ever did; you found natural oysters there? A. Yes, sir,

Q. That is all Sooy does? A. No; he has planted shells on the ground in certain places, not all over, but only in certain places.

Q. That is because he had the riparian grant? A. Yes, sir.

Q. If you, gentlemen, had a lease from the Oyster Commission, you could have done the same thing? A. Yes, sir.

BY MR. HORNER.

Q. Prior to this grant being made, you say you worked there, did you ever find natural oyster seed beds there? A. I have.

Q. How near to the shore? A. Extending right to the shore; you could jump from the bank on them, eight or ten feet.

Q. Did you ever know during the history of the Shell Commission, that the State planted shells there? A. Yes, sir.

Q. Who planted them? A. A man named Johnson.

BY SENATOR MINTURN.

Q. When were they planted by the State? A. I judge about eight years ago.

Q. How long after the planting by Johnson in behalf of the Oyster Commission was it that the grant was made to Sooy? A. As I understand when the grant was made to Mr. Sooy it was made in 1904, and that would be about six years later than what the shells were planted.

Q. How long does it take the ordinary oyster down there to mature and develop? A. That depends on the kind of bottom.

Q. You know what kind of bottom that is? A. Where Mr. Sooy is?

Q. Yes. A. To mature so as to be fit for market?

Q. Yes. A. Well, part of that will come in four years, and another part it might take seven or eight, and part of it never would come into it.

Q. How much money did it cost the State to plant these shells? A. I could not say that.

SENATOR MINTURN.—Do you know that, Mr. Horner?

MR. HORNER.—No; I don't know what quantity he planted there.

SENATOR MINTURN.—You were not on the Board?

MR. HORNER.—No.

A. He might have planted 2,000 bushels and he might have planted 5,000 bushels. I think that would have been the limit, 5,000.

Q. Then whatever the amount of seed planted was, Mr. Sooy got the full benefit of it? A. He didn't get the full benefit because it was open to the public for five or six years.

Q. After the State had planted the shells, did you oyster men continue to grapple for oysters year after year? A. Yes, sir.

Q. What effect had that on the shells? A. That would only keep wearing the shells away, but not so much as people think, because there is more or less of these oysters that die, and increase the quantity of shells, so it takes a long time to get clear of planted shells.

Q. Would not the continual grappling over those natural oyster beds, where the State had planted the shells, prevent the development of the oysters that had just been put there by the State, say the year before? A. No, sir; I think not.

SENATOR MINTURN.—I only ask for information.

BY MR. HORNER.

Q. Would it not have a tendency to clean those shells? A. Eventually it would, but it would take years to do it.

Q. When these grants were made, about the time they were made, were you in that neighborhood that particular season? A. I was.

Q. Were there any oysters there? A. There were.

BY MR. BARBER.

Q. The digging of these ditches through the upland, would that tend to increase the number of oysters in the river in any way at all, or would it simply tend to breed oysters in those ditches? A. It would not tend to increase the oysters—the digging of the ditches and planting of shells would increase the oysters in the ditches, the oysters would cling to those shells in the ditches and they would grow for the market.

BY SENATOR MINTURN.

Q. You would put the shells in the ditches first? A. Yes, sir.

Q. You would not bring oysters to the ditches unless the shells were brought there first? A. It might in time.

BY MR. BARBER.

Q. Suppose you owned that land and you were amply supplied with capital so that you could procure all the shells you wanted, could you increase largely the number of oysters there? A. On this outside ground?

Q. Yes; taking all this property, the whole thing? A. Well, I could increase it some, but I don't feel that I could increase it not over one-third or one-fourth.

Q. That is, the investment of money and the purchase of shells would not increase it over a third or one-fourth? A. Yes; that is all.

BY MR. HORNER.

Q. Do you understand the question, Mr. Gaskill? Would the continual planting of shells on this ground have a tendency to increase the oysters there, would it in your judgment? A. It would have some tendency to increase the oysters on that ground. To what extent no man can tell; some years they are all covered up and other years not.

BY MR. BARBER.

Q. Does the State Commission pursue any fixed policy in regard to the planting of shells, that is, do they plant them at certain regular intervals?

MR. HORNER.—Yes, there are regular seasons for planting, in the month of July principally.

MR. BARBER.—How do they tell, for instance, when it is advisable ?

MR. HORNER.—Oysters are supposed to spawn in the month of August in our waters, and they put the shell in in July in order to be there. If you put them there now and let them stay until next July they will be covered with slime so that the oysters will not adhere to them.

MR. BARBER.—Does the Oyster Commission have sufficient money to buy shells?

MR. HORNER.—No ; we didn't have any appropriation last year.

BY SENATOR MINTURN.

Q. The mere digging of the ditches would not produce oysters in the ditches unless shells were put there ? A. In time they might do it ; we have ditches out years ago that eventually seed themselves.

Q. That is, the spawn will float along there and attach itself? A. Very small objects the spawn will attach to, and they will grow and another will cling to that and finally build up quite an oyster bed there.

HOWARD LOVELAND sworn. Examined by Mr. Horner.

Q. Where do you live ? A. New Gretna, N. J.

Q. What is your business? A. Oyster business.

Q. Where do you oyster principally? A. From the mouth of Mullica river up three miles, I judge.

Q. Are they planting grounds at the mouth of Mullica river or are they natural seed grounds ? A. Natural seed grounds.

Q. Have you worked on the natural seed grounds at the mouth of Mullica river ? A. Most of them.

Q. Worked there this year ? A. I worked all the riparian grants.

Q. Where are they ? A. The Sooy Oyster Company as it is called, and Benjamin W. Chew and James Gail.

Q. When did they get those grants, how long did they have them? A. I don't know how long.

Q. How long have you been deprived of working there ? A. I haven't worked on their grants at all. I worked just outside of what Sooy had staked in.

Q. Did you ever work there before the grants were given ? A. Yes, sir.

Q. Are there natural oysters on there ? A. Yes, sir.

Q. How near the shore are they ? A. Within five or six feet.

Q. And you caught oysters there within a short distance of the shore ? A. Yes, sir.

Q. Did you pay license for the privilege of working there? A. I did.

Q. That is all.

CHARLES C. CRAMER sworn. Examined by Mr. Horner.

Q. Where do you live? A. New Gretna.

Q. What is your business? A. Planting and digger, something of that kind.

Q. Do you know where the natural oyster grounds are in your vicinity? A. Yes.

Q. Where? A. The mouth of the Mullica river and the iron bridge.

BY SENATOR MINTURN.

Q. What is the iron bridge, the one that goes to Atlantic City? A. Yes, sir.

BY MR. HORNER.

Q. Have you worked on most of these grounds? A. I have worked all but those deep water grounds.

Q. Worked them this fall? A. Yes, sir; worked them all but the riparian grants.

Q. What riparian grants? A. Mr. Sooy's, Mr. Gail's and Mr. Chew's.

Q. Did you ever work on those grounds that they have prior to these grants being made? A. Yes, sir; the last twenty-seven years.

Q. Are they natural oyster beds there? A. Yes, sir.

Q. How near to the shore? A. I went there last fall and worked within 25 feet of the shore.

Q. They had the grant last fall? A. Yes, sir; that is not this fall; the fall of 1905.

Q. Prior to that time, when they claimed they had the grant, did you work there? A. Yes, sir.

Q. And there were oysters there? A. Yes, sir.

Q. Natural beds with oysters on them? A. Yes, sir.

Q. How near the shore? A. The bed ran within five or six feet of the shore.

Q. Did you pay a license for the privilege of working there? A. Yes, sir.

Q. Did you ever know the State to plant shells in that neighborhood? A. Yes, sir.

Q. Where these grants were given? A. Yes, sir. On the north side where that turn is near the iron bridge Mr. Johnson planted 5,000 bushels, that Mr. Adams told me about two weeks before last, planted his whole appropriation pretty near in there.

Q. Do you consider the people are affected by reason of this grant being made and that privilege taken away? A. Yes, sir; you take South Jersey, and forty-nine out of every fifty are affected.

Q. Do you believe if these grants were continued to be given until all the public grounds were taken up, it would be advantageous or disadvantageous? A. Disadvantageous.

Q. Why? A. It would ruin South Jersey; the people would have to walk away; they could not ride away.

BY SENATOR MINTURN.

Q. What is the nature of the upland of Mr. Sooy? A. Salt meadow land.

Q. And these grants were made immediately in front of salt meadow land and not in front of high upland? A. That is right.

Q. It is the same character of land that is immediately east of the bridge? A. Yes; that is the foundation of it.

Q. Is it on the north or south side of the bridge? A. South side.

Q. The oyster land is? A. Yes, sir.

Q. And the other grant is on the north side? A. No; they are on the same side.

Q. You said one was in Burlington county? A. That is on the north side of the river, that is Mr. Chew's.

Q. The bridge runs nearly north and south?

MR. HORNER.—But after you leave the bridge the river works to the eastward.

Q. How many men has Mr. Sooy working for him? A. I don't know anyone but Mr. Weaver; that is the only one I know of.

Q. What does he do? A. He is the watchman there and takes up oysters, and what he does with them I can't say.

Q. You don't know what he does with the oysters he plants? A. No.

Q. Do you know whether he sells them? A. No. I never saw him sell one; I saw him working there.

Q. Do you know if they are taken out of the State? A. They are not taken out of the State of New Jersey; they are planted there somewhere.

LINFORD CONOVER sworn. Examined by Mr. Horner.

Q. Where do you live? A. Absecon.

Q. What is your busines? A. Oysterman and oyster planting.

Q. Did you ever oyster upon the natural seed grounds at the mouth of the Mullica River? A. I have; for about four years now I have been going up there.

Q. Were you there this fall? A. No.

Q. Have you worked in the mouth of Mullica river? A. I have worked up Goose Cove bed at the mouth of the Mullica river.

Q. You were not there this fall? A. No.

Q. Do you know anything about any riparian grant being made on the natural seed grounds? A. I haven't seen them. I said I was not there this fall; I was. I came there and worked one day, the first day, and then went home. I was there and I heard them say that they were staked in for a riparian right, and I had no right there, and for that reason went across the river.

Q. Why hadn't you any right? A. On account of these riparian grants.

Q. Did you ever work there within those lines? A. Yes, sir.

Q. The natural oyster grounds there? A. Yes, sir.

Q. And oyster beds? A. Yes, sir.

BY SENATOR MINTURN.

Q. What is the distance between these oyster beds and the solid uplands? A. They are under tide water.

Q. How much of the land between the oyster beds and the solid upland is made up of marsh land? A. I guess it is five miles, something like that.

Q. All pure meadow? A. Yes, sir.

Q. Where the tide ebbs and flows? A. High water; it takes a good high water in there; it is meadow land, but it does cover it sometimes.

Q. What is the meadow land used for? A. To cut salt hay.

Q. Is there any solid land down opposite to these oyster beds? A. I don't know that there is. I never was on the meadow from these oyster beds. I always came up from the bay, and I was not much acquainted, just came up in the fall to get oyster seed to plant.

MR. HORNER.—Now this applies to the leasable grounds only, where the Riparian Commission gave a grant for grounds that were leased by the Ocean County Oyster Commission and drove these people out of business.

SENATOR MINTURN.—The witnesses who have already testified have testified regarding land which was within the exception of the Oyster Commission act, and which the Oyster Commission has no authority to lease, which the State by its public policy has indicated is reserved for public use?

MR. HORNER.—That is right.

SENATOR MINTURN.—Now you want to prove that land which the Oyster Commission had authority to lease and did lease was

really granted by the Riparian Commission after a lease had been made by the Commission. All right, you may proceed with that.

REUBEN DRISCOL sworn. Examined by Mr. Horner.

Q. Where do you reside? A. Tuckerton, New Jersey.

Q. Are you engaged in the oyster planting business? A. Yes sir.

Q. Where are your grounds located? A. Tuckerton Bay.

Q. In the year 1902 you were familiar with the Ocean County Oyster Commission for the leasing of lands? A. Yes.

Q. Did you, at that time, avail yourself of the opportunity to make proper application for your land, as provided by that law? A. I did.

Q. And received a lease? A. Yes, sir.

Q. How long did you hold that lease? A. One year, I think.

Q. Did you make application to have it renewed? A. I did.

Q. Was it renewed? A. No, sir.

Q. Why not? A. Because the Riparian Commission took charge of the lands at that time.

Q. I know, but the Riparian Commission had no jurisdiction over your lease; you applied to whom to have your lease renewed? A. The superintendent, Mr. Horner.

Q. To the Commission? A. Yes, sir.

Q. And you were refused? A. Yes, sir.

BY SENATOR MINTURN.

Q. On what ground were you refused a renewal of your lease? A. Well, I don't know; that is up to him. I could not get a lease from him.

Q. Did he give you no reason? A. I don't know that he did.

BY MR. HORNER.

Q. Did you hear of any reason why it was refused? A. Yes, sir.

Q. What was the reason? A. On account of the Riparian Commission.

Q. What did they do? A. They sold the ground to Parker Brothers.

Q. What was the result? A. We had to give up the ground.

Q. Did you have any oysters planted there? A. I did.

Q. Did you get them off? A. Yes, sir.

Q. They told you to take them off and gave you so long to do it, and you did it? A. Yes, sir.

BY SENATOR MINTURN.

Q. In front of whose land was your lease? A. Parker Brothers, I think.

Q. At Tuckerton? A. Yes, sir.

Q. What is their business? A. They are practical oystermen and oysterplanters.

Q. Have they any place in the city? A. Not that I know of.

MR. HORNER.—Perhaps it may be well to state that these oyster people did make application to have their leases renewed. At the passage of this act there was no fund provided to locate these grants and measure them, as the law provided they should, and I will read Section 8 of the law of 1902, on page 175:

The Oyster Commission shall, from time to time, as applications are made for leases, cause the land leased under said tidal waters of Ocean county to be measured, and the metes and bounds thereof ascertained and located by ranges, monuments or other means, so that the limits of the lands embraced within such leases may be accurately fixed and easily located; the Oyster Commission shall cause such leased lands to be mapped and the maps be filed in the office of the State Oyster Commission, and shall cause the lease so made to be recorded in books kept in the office of the Oyster Commission for that purpose.

Personally, I had no jurisdiction in the matter. The Commission didn't consider the lease that they had first given a valid lease, and, therefore, refused to renew it. They gave them a sort of provisional lease, and they were anxious to comply with the provisions of the law, and they gave them this provisional lease pending the time to have them measured. I had no jurisdiction. I was secretary of that Commission, and these people I know presented seven applications to me, coming back for renewal, and I told them that the Commission had decided not to, that they were fearful of litigation with the Commission, that they had made grants of this land, and they were simply doing the inevitable and laid down to the Riparian Commission, as they did.

SENATOR MINTURN.—Where did you receive the information that the Riparian Commission had made grants?

MR. HORNER.—We received the information in an off-handed way, and I went to Trenton personally and protested against the grants being made, without any effect whatever.

SENATOR MINTURN.—To whom did you protest?

MR. HORNER.—To Mr. Cloke, in the State House. I told him the conditions, but, nevertheless, it had no effect.

SENATOR MINTURN.—What was his argument in response to yours?

MR. HORNER.—Didn't present any; we would have no contention, whatever, that we would get along nicely together.

MR. BARBER.—When was this?

MR. HORNER.—1903.

SENATOR MINTURN.—How long had the Commission granted leases before that?

MR. HORNER.—One year. The law was passed in 1902, and they gave this provisional lease to tide them over.

SENATOR MINTURN.—So these men had been in receipt of the lease for one year when the Riparian Commission undertook to make these grants?

MR. HORNER.—Yes, sir.

SENATOR MINTURN.—Prior to the passage of the act of 1903, under which the leases were made, had the Riparian Commission ever undertaken to make a grant?

MR. HORNER.—Not in this vicinity. I believe there is one in Forked River.

SENATOR MINTURN.—You don't know the year of that?

MR. HORNER.—No; it was made the year our oyster law was passed.

MR. BARBER.—Have any grants been made within the last three years?

MR. HORNER.—All these grants within Mullica river.

MR. BARBER.—Any other grants of leased lands; have any other leases been made for lands that you might have granted license for under the statute; have any been made recently?

MR. HORNER.—No; I understand application has been made for it, but to my knowledge never been granted.

BY MR. HORNER.

Q. What was the result of your losing that grant—did it seriously affect you? A. From two to four hundred a year, I estimate my loss. I went there in the winter and worked and now I have to go somewhere else.

Q. What do I understand by that, you were driven out of business to that extent, is that it? A. Yes, sir; I consider it that much damage every year, two to four hundred dollars.

BY SENATOR MINTURN.

Q. Was this a grant that could be worked in the winter? A. Worked in the winter when it was not covered with ice.

BY MR. HORNER.

Q. You planted oysters on this ground? A. Yes, sir.

Q. And did the work; you invested your money and put them there? A. Yes, sir; I planted the oysters on the ground.

SENATOR MINTURN.—How much of this land that has been

leased by the Oyster Commission has been subsequently granted away by the Riparian Commission, do you know?

MR. HORNER.—No; I don't.

SENATOR MINTURN.—How many grants have been made by the Riparian Commission?

MR. HORNER.—Only the one grant.

SENATOR MINTURN.—How many of the leases did that grant cover?

MR. HORNER.—That I can't say; we had application for the balance of that ground; we were waiting to have that ground measured according to law. They were filed in the office, and they filed applications to have the ground measured, and some paid money for a provisional lease, which, in my opinion, was entirely illegal.

BARZILLA PULLEN sworn. Examined by Mr. Horner.

Q. Where do you live? A. Tuckerton, New Jersey.

Q. What is your business? A. Oystering and clamming.

Q. Do you have a private ground, or do you cultivate oysters? A. Yes, sir.

Q. Where? A. Tuckerton Bay, up against Gaunt's Point.

Q. Were you ever affected by any riparian grant in your neighborhood? A. I certainly was.

Q. To what extent? A. I consider it a damage to me of a hundred to two hundred dollars per year.

Q. How did it damage you? A. It was good ground and I worked there when I could not work in other places, because it was open in the winter time more than down below further, and the oysters grew and increased.

Q. Why were you deprived of still working your ground? A. Because the Riparian Commission had granted to Parker Brothers this ground.

Q. Did you ever have a lease; you understand that the law in force at that time, that a man could not plant oysters and must lease his grounds, did you provide yourself with a lease? A. I did.

Q. How long did you have it? A. One year.

Q. Did you make application to have it renewed? A. Yes, sir.

Q. And were refused? A. Yes, sir.

Q. Whom did you make application to? A. To Mr. Horner.

BY SENATOR MINTURN.

Q. Who is using this land now? A. Parker Brothers Company.

Q. They are using it for the same purpose you were using it? A. Yes, sir.

Q. In the same way? A. Yes, sir.

Q. No change in it? A. No.

Q. Except the ownership is in them? A. No; they pulled up stakes that we had down, and that is the only change.

Q. Is it customary when you get a lease to stake out your land? A. Yes, sir.

Q. And they pulled those up? A. Yes, sir.

Q. Did they put down any of their own? A. They showed the riparian line.

Q. How? A. They followed the bank around 1,000 feet from the bank.

Q. By stakes? A. Yes, sir.

Q. One thousand feet from the bank? A. Yes, sir.

Q. How far out in the bay does that bring them? A. It takes the best ground for oyster planting that is there.

Q. Does it interfere with sailing? A. No, sir.

Q. They never object to sailing over it? A. No.

PHILIP SPRAGUE sworn. Examined by Mr. Horner.

Q. Where do you live? A. Tuckerton, New Jersey.

Q. What is your business? A. Oystering.

Q. What particular part of oystering were you engaged in? A. Oyster seeding; planting oysters.

Q. Cultivating oysters? A. Yes, sir.

Q. Where did you cultivate oysters? A. Off Gaunt's Point.

Q. How long have you cultivated oysters in that particular neighborhood? A. About ten years I should think.

Q. Always using the same ground? A. Yes, sir.

Q. From the time you commenced ten years ago to now you used the same ground? A. Yes, sir; until it was taken away from us.

Q. How do you reconcile the fact that you say you are using the same ground and it was taken away from you? A. It was used until it was taken away

Q. You had some taken away from you? A. I had one-half of mine and the majority of the ground I was overseeing.

Q. Who took it away? A. Parker Brothers received it from the Riparian Commissioners.

Q. Didn't you know there was a law that you could lease the ground? A. I did lease it.

Q. Why didn't you continue to lease it? A. I did as long as I could get one.

Q. Who refused to give you a lease? A. Mr. Burton, being one of the Commissioners in connection with Mr Horner.

Q. Sir? A. In connection with you.

Q. Did you by reason of your being deprived and driven off this ground, did you ever suffer any inconvenience? A. Yes, sir; I did.

Q. In leased property? A. Leased ground; I was stopped cultivating oysters.

Q. But you had the privilege of taking what property you had away? A. Yes, sir.

Q. Could you get all your oysters? A. No; not all of them.

Q. You had to leave some? A. Yes, sir.

Q. What was the result of those you left, who got them? A. Parker Brothers.

BY SENATOR MINTURN.

Q. You never got any compensation for those that you left? A. No.

Q. How many men did you employ when you were on that ground? A. I had a personal ground of my own, and I was foreman over a lot of others, and I heard the man I was foreman for say that he had paid as high as fifty dollars for it.

Q. On your own ground did you employ any men? A. Yes; I was a partner; planting oysters on my own ground and foreman over his.

Q. How many men did you have under you? A. A different number; sometimes two or three and sometimes a dozen or more.

BY MR. HOLCOMBE.

Q. How many do Parker Brothers employ now? A. At the present time?

Q. During the oyster season? A. I think they have two men hired at the house, three brothers of them, and they use a boat to take up their own oysters as a rule, and then they have a few more hired at the present time.

SENATOR MINTURN.—How much did Parker Brothers pay the Riparian Commission for this land?

MR. HORNER.—That I don't know.

SENATOR MINTURN.—What is the extent of the grant?

MR. HORNER.—There it is before you.

SENATOR MINTURN.—Do you know, Mr. Sprague?

A. I could not tell.

BY MR. BARBER.

Q. Do you know whether Parker Brothers obtained any more oysters than the men did who obtained license from the State? A. I could not say that; they found a good many oysters, and several of us, we found a good many; the man I was employed for found a good many, several schooner loads at a time.

Q. You don't know whether the production has increased or decreased since Parker Brothers took the ground? A. We can't tell; we practically had to go out of business or plant some on our little ground, and have planted very few since.

BY SENATOR MINTURN.

Q. What is the number of your tract? A. I don't know; I can show it to you on the paper (indicating).

Q. What is the land known as Gaunt's Point, who owns that? A. Parker Brothers.

Q. What is that, meadow land? A. Yes, sir.

Q. Over which the tide ebbs and flows? A. On very high tides.

Q. Is there any road leading down on that to the bay? A. Not to the Point.

Q. Is there any road leading to the oyster grounds? A. There is a road that goes down to the head of the cove, and then we walk across the meadow.

Q. Is that on Parker's land? A. Yes, sir.

Q. Is that a public road? A. I don't think it has ever been known as a public road, still I can't tell.

Q. It is a pathway? A. It has been a road and kept up at one time by the public; how it is now, I don't know.

LEWIS ROSSELL sworn. Direct examination by Mr. Horner.

Q. Where do you live? A. Tuckerton.

Q. What business are you engaged in? A. Clamming and oystering.

Q. Did you ever plant any oysters? A. Yes, sir.

Q. Where? A. Tuckerton Bay.

Q. What part of Tuckerton Bay? A. At Gaunt's Point.

Q. Did you provide yourself with a lease for the ground you are using? A. Yes, sir.

Q. You still hold the ground? A. No, sir.

Q. Why not? A. I had to give it up.

Q. Didn't renew your lease? A. No.

Q. Why? A. The Commission would not renew it.

Q. How long did you have it? A. One year.

Q. You made an effort to have it renewed and you were refused by whom? A. Mr. Horner.

Q. What did you do? A. I had to give it up.

Q. Whom to? A. Parker Brothers.

Q. What right had they to take it? A. They said they had a riparian grant.

Q. Did you have any oysters planted there at that time? A. I did.

Q. What did you do with them? A. I had to leave them there.

Q. Leave them there on the ground? A. Yes.

Q. Didn't take them away? A. I could not.

Q. Why? A. They forbid me.

Q. Would not allow you to take them? A. No.

Q. Didn't they give you an opportunity to take them away? A. They gave me one year, but the oysters were too young to take them away.

Q Too young, too small? A. Yes, sir.

Q. Did you know of any other people in the neighborhood who were deprived of using their ground by reason of the riparian grant to Parker Brothers? A. Yes, sir.

BY MR. BARBER.

Q. What did you estimate the value of those oysters to be? A. I had 125 bushels there; the time they were ready to take up they were worth a dollar a bushel.

BY MR. HOLCOMBE.

Q. Did Parker Brothers themselves order you off that land? A. They did.

BY SENATOR MINTURN.

Q. Did you get no notice from anybody that this land had been granted to Parker Brothers? A. I got notice that they had a riparian grant.

Q. That was after the grant was made? A. Yes, sir.

Q. Did you get any notice that they were going to apply for a grant? A. No, sir.

SENATOR MINTURN.—Is there no requirement under which a man's lease is recorded, or public notice given of it by which the Riparian Commission may be notified in advance that a man has some right?

MR. HORNER.—No public notice; we have a record in the office of the Commission. The Riparian Commission did all this with a full knowledge of what they were doing. I appeared personally and protested, and I got no satisfaction, and I went to Trenton and talked with Mr. Cloke, and he told me everything was nice, and then done the other thing.

SENATOR MINTURN.—He knew these leases were outstanding?

MR. HORNER.—Yes, sir.

U. S. DRISCOLL sworn. Examined by Mr. Horner.

Q. Where do you live? A. Tuckerton.

Q. What is your business? A. Oystering and clamming.

Q. Do you ever plant and cultivate oysters? A. Yes, sir.

Q. Where did you plant oysters? A. Outside of Gaunt's Point and inside of Gaunt's Point.

Q. What right had you to the ground you were planting on; you understood that a man must take a lease; did you provide yourself with a lease? A. I had a lease and it ran out.

Q. Why didn't you have it renewed? A. Because Mr. Horner would not grant it to me.

Q. Did you make application to have it renewed? A. Yes, sir.

Q. What was the result; are you still occupying that ground? A. No, sir.

Q. Why not? A. Parker Brothers.

Q. What did they do? A. They took the ground; a riparian grant took the ground.

Q. Did Parker Brothers ever notify you that they were going to make application for that ground? A. No, sir.

Q. Did they notify you that they had secured title to that ground? A. Yes, sir.

Q. What did they tell you? A. They gave us a year to get our stock off.

Q. Did you get yours off? A. No, sir.

Q. Left it there? A. Yes, sir.

Q. Who got the benefit of it? A. Parker Brothers.

Q. How much did you have there to the best of your judgment, how many oysters did you have there? A. I judge about 125 or 150 bushels.

Q. You are only a poor man, a small planter, and you can't afford to buy oysters at the ruling prices, and you simply planted what oysters you gathered from the natural seed beds? A. Yes, sir.

Q. And then lost them? A. Yes, sir.

BY SENATOR MINTURN.

Q. You never got any notice from anybody that Parker Brothers were going to apply for this? A. No, sir.

BY MR. HOLCOMBE.

Q. How much money were you losing by moving? A. I suppose a couple of hundred or more a year difference to me.

BY SENATOR MINTURN.

Q. Why could you not move your oysters within a year? A. They were not big enough.

Q. It simply meant their destruction? A. Yes, sir; were not big enough to move.

BY MR. HORNER.

Q. How much would that 125 bushels amount to in the course of three years, provided you could leave them lay there, on an average? A. I could not tell you.

Q. Would you be likely to get 200 bushels out of them? A. If they done well.

Q. Would you be likely to get any more; did you ever plant a hundred and get two hundred? A. Yes, sir.

Q. Did you ever plant a hundred and get three hundred? A. I don't know that I have.

Q. Then the chances are that your oysters would about have doubled themselves in three years? A. Yes, sir; do that all right.

Q. Provided you could let them lay there? A. Yes, sir.

BY SENATOR MINTURN.

Q. When you planted under that lease of the Oyster Commission, I suppose you expected to have that lease renewed year after year? A. Yes, sir.

Q. So that what you planted you could take away as they matured? A. Yes, sir.

MR. BARBER.—Do you know what Parker Brothers paid for that lease?

MR. HORNER.—No.

SENATOR MINTURN.—Do Parker Brothers live down there?

MR. HORNER.—Yes.

FRANK PULLEN sworn. Examined by Mr. Horner.

Q. Where do you live? A. Tuckerton.

Q. What is your business? A. Oysters and clams.

Q. Did you ever plant oysters? A. Yes, sir.

Q. Where did you plant? A. Off of Gaunt's Point, below it.

Q. How long have you been planting there? A. About fourteen or fifteen years.

Q. Undisturbed by anybody during that time? A. No, sir; in the last four or five years Parker Brothers have interfered with me.

Q. What did they do? A. Ran a line right across about 20 feet off the long way of my lot, maybe 30 feet.

Q. Did you have your lot planted at that time? A. Yes, sir.

Q. Did Parker Brothers notify you that they had made application for this lease of that ground or the purchase of it? A. After

the leasing of it they notified us to vacate, to give us a year or something like that to take it up.

Q. They simply notified you that they got it? A. Just told us that they got it.

Q. Did you take your oysters up? A. I had my oysters up off of that ground and moved them off on the other part in the summer time and part of them died. They knocked the growth off, they were not big enough for the market, and the others I left, and they mudded in the winter and damaged me a great deal.

Q. You consider by reason that you have moved the oysters it damaged them and caused their destruction? A. Yes, sir.

Q. Is it possible for you to get all your oysters off that ground? A. You could not do that.

Q. You had to leave some of them? A. Yes.

Q. Who got the benefit of them? A. Parker Brothers, and two years ago they ran their line again and took 47 feet more from the corner, and this year while I was going to the Gravel, after staking it out, I could not measure it because I did not know how far it was from the corner, but I measured it before because I had stakes down.

Q. If I remember right, you have a very small lot, and in a year or two they will have the whole of it? A. Yes, sir; they took a long way up, off me and my father, and they have about one-third or one-fourth or one-half.

BY SENATOR MINTURN.

Q. They are killing you off by degrees? A. Another year and they will wipe me out.

MR. HORNER.—We are through.

E. A. HORNER, Jr., called and asked the following questions by Mr. Barber.

Q. What did you charge for that license? A. $2.50.

Q. Why was that sum fixed? A. That sum was fixed before we came into existence; we merely followed in some other fellow's tracks.

Q. The idea was not to place any restrictions on it? A. It was brought about by a former shell commissioner, and when our law was passed we simply incorporated that feature in our law, believing that the State would still continue to make some appropriation to replenish the natural beds, and the oystermen were willing to pay something for their privilege.

Q. If an oysterman got one of those licenses, would he not have

exclusive right to that property? A. No; that would not entitle him to any particular place, but on any natural seed bed.

Q. But I mean this lease for $2.50? A. He does not lease any land; he leases his land at so much per acre.

Q. Who grants him that? A. The Oyster Commission for Ocean county and another for Atlantic county, and another in Cumberland county lease land for cultivating oysters; that is one thing, and the license applies to the natural seed beds and is another matter.

Q. Then this land that was granted to Parker Brothers was land in which these men had planted oysters, and had been leased by them from the Oyster Commission? A. They got this grant in 1903; 1902 this act was passed, prior to that time they only had a squatter's right, the planter did. Now, this law was passed in 1902 and made provision for that grant provided he made application within the time limited, to hold that same land.

Q. That has been the custom then, for certain men to use that right, a squatter's sovereignty, as you might call it? A. Yes, sir.

Q. And the idea of this law was to protect them in the enjoyment of this land? A. Yes, sir; that is the idea; provided they took a lease; every man had a chance to hold on to the land that he held at the time of the passage of the act, provided he made application within the time limited.

Q. Then the policy of the Board was to make the prices for the leases nominal? A. $3 per acre for the year.

BY SENATOR MINTURN.

Q. Did the Shell Commission go out of business when you went in? A. No; the following year.

Q. You attended to all the business that was formerly attended to by the Shell Commission? A. All excepting planting shells; we never got an appropriation. They didn't lease land; they issued licenses to the natural beds, but didn't lease any.

Q. There are boards of oyster commissioners in Atlantic and in Ocean county and Burlington? A. None in Burlington; in Cumberland.

Q. Do you join with the Atlantic County Commission? A. No. They lease for Atlantic county and we lease for Ocean.

BY MR. BARBER.

Q. Then you were to get $3 per acre from each one of these men who has been affected by Parker Brothers? A. Not necessarily three dollars; we would get a price per acre. The mud bottoms lease for 50 cents.

Q. The price varies? A. Yes, sir.

Q. But you would have been paid a certain sum per acre? A. Yes, sir; no doubt about that.

Q. Did the Riparian Board give any explanation to you? A. They gave the impression that they would not do anything conflicting with our interests and duties, and then went on and did the trick just the same.

BY SENATOR MINTURN.

Q. If they were to go and sell riparian lands in this bay, your Board would have no necessity for existence? A. No; we are practically the fifth wheel of the wagon.

(At this point a recess was taken.)

SENATOR MINTURN.—We are here to have facts presented by the citizens of Toms River with reference to the streets that have been cut off from the river. The Board of Trade, I understand, are desirous to present these facts.

GEORGE W. ROGERS sworn. Examined by Senator Minturn.

Q. You may testify in your own way regarding the facts that you desire to present to this Committee. A. This is a new thing to me. I didn't know what this meeting was going to do. I have just come from Asbury Park.

Q. What is your business? A. I run a boat from Toms River to Seaside Park.

Q. A summer pleasure boat which carries passengers between Toms River, Island Heights and Seaside Park? A. Yes, sir.

Q. And you, of course, charge a fare for carrying those people? A. Yes, sir.

Q. Is it really a public ferry boat? A. Yes, sir.

Q. Seaside Park is the seaside resort for this section of the country? A. Yes, sir.

Q. It is the beach? A. Yes, sir.

Q. And in order to get there you have to take advantage of this boat? A. Yes, sir.

Q. What do you desire to present to this Committee in connection with your boat? A. The facts are that we haven't had any public place where we could land. I have been landing in front of private owners. I suppose that is the thing that these gentlemen want to show.

Q. You are obliged now to land your boat and your passengers and get your passengers on the boat from a private dock? A. Yes, sir.

Q. There is no public dock in Toms River that you can land at?

A. No, sir; if these gentlemen were to tell me to stop, I would have to take the boat off.

Q. And you could not accommodate the people of Toms River? A. No.

Q. And the people of Toms River, if they wanted to go to the beach, how would they go? A. By train.

Q. In other words, the river would be of no use to them? A. No.

Q. How long has that condition continued? A. With me for five years, since I have run the boat, five summers.

BY MR. CROWTHER.

Q. Has ever any application been made to the town here for permission to build a slip at the foot of the street? A. I have talked to people, but they didn't seem to have any authority to give me any help, and everybody wanted it, but there didn't seem to be any remedy for it.

BY SENATOR MINTURNS.

Q. As far as I can understand, the ends of the streets are really cut off from the water by private owners, so the township is really unable to build a dock even if it were able to do so, and you are required to go to a private owner to get permission to dock? A. That is right.

Q. The Riparian Commissioners have granted to private owners at the foot of every street without any notice to the municipality, as I understand it from the members of the Board of Trade; they have granted all the riparian rights at the foot of these streets.

MR. CROWTHERS.—Is not that against the law as it stands; does not the street run to high water?

SENATOR MINTURN.—That, of course, we are to find out later on from the Board of Trade and the maps; but the point that the Captain desires to present is, that he can't get any place to land his boat, any public dock. Is that all you desire to bring out from the Captain?

MR. FISHER.—I think so.

MR. VAN HISE.—I don't know of anything else. Where our public dock is now he can't get on account of the water.

Q. (By Mr. Fisher): You can't reach where the public dock is because of the lack of water? A. Yes, sir.

MR. CROWTHERS.—You have a public dock?

MR. VAN HISE.—We recently acquired it.

MR. FISHER.—That is up the road right where you cross the bridge.

Q. And you can't get there? A. No, sir.

Q. The water is so low that you can't bring your boat, and nobody else can bring a boat?

MR. VAN HISE.—It is not more than two feet.

BY SENATOR MINTURN.

Q. How long have you lived here? A. I have been in the township, not lived here all the time, twenty years. I have been running a boat here five.

Q. Do you remember when the river was navigable up to the bridge? A. Yes, sir; the first year; but we would get stuck a good many times, and then we had to land down here.

Q. What was the depth of water? A. I suppose it has been filled up a foot or something more since then.

LEWIS F. BODINE sworn. Examined by Senator Minturn.

Q. Your business is that of civil engineer? A. Yes, sir.

Q. How long have you resided in this locality? A. Two years, off and on.

Q. In Toms River? A. I have known this country for the last thirteen or fourteen years; since 1889, in fact.

Q. Have you been requested at times to make a map of Toms River and its vicinity? A. Some portions of it.

Q. Are you acquainted with Toms River generally, in its different locations along the river? A. Yes, sir.

Q. Have you made a map? A. I have a map here that I copied from the Riparian Commissioners' map from their office at Jersey City. I did that for my own benefit so as to know where the various riparian grants were located.

Q. Have you that map with you? A. I have that map here. I copied this map some five or six years ago, and I have recently taken from the county records grants made since that time and put them upon this map so as to bring it up to date.

Q. Will you show that map to the Commissioners and explain to them the different locations and lines? A. (Witness did so.)

Q. What do you know about the conditions there? A. I know the conditions.

Q. As I look at this map the riparian line indicated on it runs almost through the centre of the island called Gowdy Island, through the centre of it; is that so? A. That is it. In other words, they have given a grant right out into the channel as shown on the map, where they established their exterior line. Here is one exterior line and here is another, and they have granted right out into the middle of the channel.

Q. To private owners? A. Yes, sir.

Q. Do you know who fixed that exterior line? A. I don't, only by Mr. Payne's testimony; it was supposed to have been done by the Riparian Commission.

Q. Mr. Payne's testimony? A. That is, by what he told me.

Q. Who fixed it? A. He said the Board fixed it.

Q. Did the Board come down here and investigate conditions as far as you know? A. I don't know.

BY MR. HOLMAN.

Q. Did you ever make any map for these private owners to procure the riparian rights? A. None at Toms River; I have at Island Heights.

Q. Didn't you make the one for Mr. Breckenridge? A. Yes, sir; I did; I had forgotten that.

Q. Did you show any street running to the river which came down through that property? A. No; I did not.

Q. Was there a street there? A. There was a road there.

BY SENATOR MINTURN.

Q. There was a public road there? A. Within the last two days I believe the jury decided it was a public road.

Q. So far as public observation could guide one the street was a public street? A. Yes, sir.

Q. It ran down to the water? A. Yes, sir.

Q. As I understand it, when you made this map for Breckenridge, who, I understand, is the owner on the east side of that street—on both sides—when you made that map you intentionally omitted the street? A. I omitted the street under instructions from Mr. Breckenridge's counsel who said he made investigation and it was not a public street.

Q. So far as you could observe, that street ran down to the water at the time you made the map? A. It was not graveled to the water; I suppose there was 75 or 100 feet of sand intervening between the gravel part and the water. It was open; there was no obstruction there, but it was just like water sand.

BY MR. FISHER.

Q. And the jury decided yesterday that it was a public street to the water? A. I was not here and only know from hearsay.

MR. HOLMAN.—They decided it was a public street.

SENATOR MINTURN.—And as I understand the facts now, Mr. Brown, the Prosecutor, states that a suit in ejectment was brought by the township against Breckenridge to cover that street end which they obstructed, and yesterday in this court room the jury rendered a verdict that the street was a public street and belonged to the township.

MR. FISHER.—But the Breckenridges have a riparian grant in front of it.

BY SENATOR MINTURN.

Q. Is that so? A. Yes, sir.

Q. Does that street show on this map? A. No, sir.

SENATOR MINTURN.—Is there any map here, Mr. County Clerk, that does show it?

MR. BROWN.—Not on a filed map.

MR. HOLMAN.—What I want to bring out is, that there was an open street to all appearances to anyone traveling down Washington street which ran to the river, and it looked like a local street, and it was 75 feet wide direct in an air line to the river. The property owners made application to the Riparian Commission for a grant of the property adjoining this street, and in making their map they purposely omit this street in order to get the grant from the Riparian Commissioners to the property in front of the street out into the river.

SENATOR MINTURN.—When did they get that grant?

MR. HOLMAN.—1904. It is a loose way of doing things and somebody is at fault for making such a grant. No matter if the court had never decided it was a public street, to all human appearances it was and had been for thirty years or more.

SENATOR MINTURN.—Don't you think the Riparian Commission under the circumstances should not shoulder the entire burden of guilt?

MR. HOLMAN.—I don't understand that we are trying them; we are simply showing the bad method; that they granted it without any notice to the public to see if the public were interested. I can't blame the Riparian Commissioners when they acted upon a map which had been furnished them in good faith.

SENATOR MINTURN.—How can you say that the map was furnished them in good faith, the Riparian Commissioners sitting in Trenton or Jersey City, when they accepted a map furnished them by somebody employed by the applicant, which showed not the exact condition but a fictitious condition of things?

MR. HOLMAN.—Well, they accept such maps; that is one of the points I wish to bring out, and it is a loose way of doing the business through which the public are euchred.

SENATOR MINTURN.—They have done that in other places. This is the first time I have heard of a map being furnished falsely showing the conditions by which the Riparian Commissioners were imposed upon.

MR. HOLMAN.—You take that very map which you have there,

which is a copy of the Riparian Commissioners' map, there it distinctly shows the street running to the river, on a map which their engineer apparently made and yet there it shows a street running to the river.

SENATOR MINTURN.—Which street is that?

MR. HOLMAN.—Horner street. It runs direct to the river. No question about it, this is the Commissioners' own map, and yet that grant was made.

SENATOR MINTURN.—Without any notice?

MR. HOLMAN.—Apparently without any notice.

BY SENATOR MINTURN.

Q. Mr. Bodine, how many streets are there on that map of the Riparian Commissioners, which you say you copied from the records of their office, which show streets running to the water front, and in front of which streets riparian grants have been made? A. I don't see but one street that they have got shown running to the river.

Q. What street is that? A. Horner street.

Q. Was there a grant made in front of that street? A. Yes, sir.

Q. When? A. I haven't the date marked on there.

BY MR. BROWN.

Q. Which street do you mean? A. Reckless street, William Reckless and others.

MR. BROWN.—That is an old one.

A. How old?

MR. BROWN.—1897 or eight, that is my impression.

SENATOR MINTURN.—It has been held by the Court of Chancery, not longer than a year ago, that a grant made by the Riparian Commissioners, in which they were imposed upon, or in which it was shown that fraud was made use of to procure the grant, would be set aside by the court, upon the application of the Attorney-General, and if these grants were made under those circumstances, in other words, if it be true that a condition of things was presented to the Riparian Commissioners which did not exist in reality and in fact on the ground, by which they were induced to make a grant without notice to the township, that grant can be set aside. However, we are through with Mr. Bodine, unless you have some other questions to ask him.

W. SCOTT JACKSON sworn. Examined by Mr. Holman.

Q. What position do you hold in this township? A. Member of the township committee.

Q. Are you chairman of the township committee? A. Yes, sir.

Q. How long have you been a member of the township committee? A. Nearly four years, not quite.

Q. What were you before you were on the township committee? A. I was township clerk from 1890 to 1903, with the exception of three years.

Q. Then you have been practically connnected with the township committee since 1890? A. Yes, sir.

Q. I would like to ask you if you ever received any notice of the intention of the Riparian Commissioners to make a grant in front of any street in Toms River? A. Never.

Q. Or any communication of any kind in reference to the grant at Toms River? A. Never have.

Q. And as member of the township committee and as clerk of the township committee, you know there is no record of any such notice in your office? A. No, sir; there never was any such record.

Q. Did you keep the minutes when you were clerk? A. I did.

Q. And have presided at the meetings since? A. Yes.

Q. And no such notice could have been received without your knowledge? A. I should think not.

Q. It would naturally be addressed to you either as chairman or clerk? A. If it were not addressed to me, if it was addressed as clerk, it ought to be brought before me.

SENATOR MINTURN.—I think it would be important to get the date of these grants, because when the Committee makes its report, it wants to refer to them by dates. It would not be fair to charge these grants up to the present Board when in reality they were made by some other Board.

BY MR. HOLMAN.

Q. Do you ever remember Water street when it was at the river's edge? A. Yes, sir; I have driven through it many and many a time with the water two feet deep.

Q. Is that street in the same location now as it was then? A. Well, the street near to it had been filled in, I should think by those lots facing on the street; it is very near the same; it might be just a trifle larger, but very little.

Q. Take Robbins' Cove, do you remember when there was no land south of what is now Water street? A. Where the driveway was at that time?

Q. Yes. A. Yes, sir; I certainly do.

Q. Then all of the land in Robbins' Cove that is south of Water street is made land? A. Yes, sir; in regard to Horner street I can

remember when that went down, there was a street down and a house on it.

Q. Have you ever traveled on that street to the river? A. Yes, sir.

Q. There are houses there yet? A. Yes, sir; there is one there now and there was one burned down only a short time ago.

Q. Why is there not a street there now? A. I can't tell you—after I went to Ohio, when I came back that was all closed up.

Q. What, at the present day prevents one from going down there? A. I can't tell why.

Q. What prevents anyone from going? A. There is a fence going across.

Q. What else? A. It seems to me there is a boat house right in front of it—yes, I think there is.

Q. Has the township committee, from your experience with that committee since 1890, ever made any application for a grant for the township? A. Not that I know of.

SENATOR MINTURN.—The Breckenridge grant was made in 1904, I see by this map.

GEORGE C. VAN HISE sworn. Examined by Mr. Holman.

Q. Where do you live? A. Toms River.

Q. Do you own a boat? A. Yes, sir.

Q. You travel up and down the river? A. I do, frequently.

Q. Ever had any trouble getting up and down Toms River? A. Yes.

Q. In going up and down Toms River where did the channel run with reference to Robbins' Cove, and with reference to the grant as shown on that map? A. There are two channels down there.

SENATOR MINTURN.—You, gentlemen, speak of Robbins' Cove as if these gentlemen understood it. It is not on the map.

A. The deepest water as you go down here follows the shore and comes right close in along here, way in there, and then out this way. There is also another channel which comes in and goes to this point, but the deepest channel is right in close here, follows then within 15 or 20 feet of this line. This shore line is not correct on this map. There is about six or eight inches more water by following it down right here. Now, this is the yacht club property, and this riparian line runs within one foot of the club house dock, all the way past the club house property, completely cutting off this water front on this side from the Yacht club, and consequently, if you sail in here you are sailing all over this grant where they have filled

in solid, if I understand the map correctly. The channel that goes around this point is on the inside of that line. This map is on a very small scale, 416 feet to the inch. That would cross all the deep water there so you could not get out with a boat if that was filled in to that line.

Q. Prior to the time of this grant and during the time all these grants were granted by the Commission, was the deepest water then where the grant now runs across? A. Yes.

Q. And still continues up to this time? A. Yes.

Q. And that has always been open as a natural channel in there? A. Not always—yes, this has always been open as a deep cove. The water in there was five or six feet deep.

Q. So that the deep channel of the river is really covered by riparian grant? A. Yes, and was at the time they were granted—that was the deepest water in there. This grant here extends out. I don't know why a grant in there to William Reckless, who does not own the land in here, should be granted. For instance, Reckless don't own the upland in there; that is the John H. Iron property. This has all been filled in and they have got a boat house out on there, and I don't know whether they filled out further than the riparian line or not; you can't tell. The old river, since I can remember, was way in back of where these boat houses are, a long distance.

BY MR. FISHER.

Q. What is the nature of the fill where they are making it? A. They have no bulkhead; they take their shavings from the boat house once a week and run them out to the edge of the river and dump them down, and then the man that built the boat house he puts a lot of sand on it, tin cans and rubbish and things of that description are simply dumped on the bank of the river. They extended that out in the last ten or twelve years I suppose a hundred feet.

Q. What is the result of filling in with shavings on a swift flowing river? A. They float down and form a sand bar, they settle in the course and the sand catches on them and forms sand bars, which is continually filling it up.

BY SENATOR MINTURN.

Q. What has been the effect of these grants in the main channel of the river? A. If they hadn't granted these grants away we would never have this difficulty in getting in across there, because our water would run right straight across and it would have been better water.

Q. The difficulty now is you have sand bars in the river? A.

Yes ; from the way they filled up and changed the course of the river.

BY MR. FISHER.

Q. What effect, as you have seen it traveling up and down the river, did the building of the island between the bridge and the extension of the Central railroad bulkhead out into the river and narrow the channel down to a narrow canal where the river was formerly wide enough, have on the cove down below the next point? A. It filled it up ; it narrowed the water and washed the sand and distributed right down there and formed a sand bar.

BY SENATOR MINTURN.

Q. These things would not have been done without the riparian grants? A. No. I don't see how ; I don't see how they could legally be done ; as a matter of fact they did these things and received the grant afterwards, according to my understanding.

BY MR. FISHER.

Q. Do you know whether there was a riparian grant for that island when the island was built? A. Not of my personal knowledge. I have understood that from hearsay.

BY MR. HOLMAN.

Q. Suppose that all of these riparian grants that have been made, the owners had filled out or docked out to where the riparian grant gave them the privilege, how large a draught vessel would have been able to have gone down the Toms River from the bridges? A. There could none go down on one side of the island if that exterior bulkhead line cut it off. On the other side the bridge cuts it off, you could not go under that, and I could not say how deep the water would be there, but it would narrow up there considerably.

Q. If the channel at Toms River had been left as it was before these grants were made how heavy a draught vessel could have gone down Toms River from the bridges? A. They formerly came up there drawing five or six feet of water.

MR. HOLMAN.—I want the Committee to understand that if the fills are made as granted by the Commission we will be unable to get a boat down Toms River from the bridges, and if the river was left, or the channels were left as they originally were, we could go down with vessels drawing five to six feet of water.

SENATOR MINTURN.—The effect of these grants is to shut your river off entirely?

MR. HOLMAN.—Yes.

BY MR. FISHER.

Q. Do you remember where the steamboat dock was, where it

used to connect with the Central railroad? A. Yes, sir.

Q. How large a steamboat used to come up—how many people did it carry? A. That ran before I lived in Toms River.

Q. Do you remember where the steamboat dock is now? A. I remember where it is all covered up.

Q. That is where the steamboat dock formerly was? A. Solid land, solid filling.

BY SENATOR MINTURN.

Q. Who has filled in there? A. The Central railroad.

Q. Have they a grant? A. I believe they have now.

Q. From the Riparian Board? A. Yes, sir.

MR. HOLMAN.—There is none on record.

Q. What are the streets that are blocked off and stopped as far as the public are concerned by private owners and riparian grants? A. I don't know as I can answer that, because I don't know what streets run to the river. The fact of the matter is there is no street except our main street which crosses the bridge that is now opened to the river in the village, until yesterday when they opened one street. That is the only street I know of beside the main street that crosses the bridge. It is all claimed by private ownership and the large majority have riparian rights.

Q. As I understand, the entire northerly shore of this river from the bridge eastward, practically to Island Heights, is covered by riparian grants? A. Well, a large part of it, I guess.

Q. I so understood, and extending to Island Heights I will say right through the town? A. Yes; practically all of it. Some few haven't got the riparian grants, right back of those stores and just below the hotel.

Q. They have filled in, nevertheless, without any grants? A. Yes, sir; where Mr. Brandt's lumber yard is he has filled in some 12 or 15 feet which formerly was just a solid shore.

Q. Who makes the line, the exterior line for these grants? A. For these bulkheads that are now here?

Q. Who makes the line for the grants, who dictates how far out the riparian grants shall extend into the river? A. I could not say.

Q. Is it a mere matter for each private owner to go before the Board and say he wants the line to go out so far? A. I can't tell you.

MR. HOLMAN.—From what I have seen of these grants it appears to me that probably the first grants that were made were made to this point that extends furtherest out into the river, and then when they asked for these grants out to this cove, without any regard to this cove, they have granted it clear out to the exterior

line, out on the point, consequently, it wiped the deep channel entirely out.

Q. Then they were made without any reference to the channel? A. They made a grant here of 409 feet out into the river.

Q. Where was that? A. That is the Beatty grant running out along the Yacht club property.

Q. The effect of that grant is to shut out the Yacht club entirely? A. Yes, sir; it just simply runs out to their bulkhead, so that they can fill that up practically to their dock with a solid fill. Take down here in Mr. Brooks' riparian grant—I don't know how far out that does go—that goes out at least 300 feet. That is the deepest cove in this river.

BY MR. CROWTHERS.

Q. I want to ask a question that has been brought out by the township clerk, that the township directly or indirectly never had any notice apparently of the granting of these grants by the Riparian Board. You spoke of a grant that has been given in front of some property owned by a man named Iron? A. Yes.

Q. Do you know whether he was served with any notice or not? A. That I don't know.

MR. CROWTHERS.—Does anybody here know whether he got notice?

MR. FISHER.—No; we could not know that.

BY SENATOR MINTURN.

Q. Who got this grant? A. William Reckless.

Q. Who owned the upland? A. John H. Irons.

MR. BROWN.—Part of it was Iron's and part was Reckless'. Reckless took title to it all so that he could make the application.

JOSEPH GROVER sworn. Examined by Senator Minturn.

Q. How long have you been in the township of Toms River? A. Fifty-one years, within a few days.

Q. Are you familiar with the streets in Toms River? A. I think I am.

Q. Do you know of any streets of Toms River ever having run to the river or to the water? A. Well, when I was a boy for several years we lived on this Horner street, and two of the houses faced Horner street, where Horner street was supposed to go to the river. Of course, none of our streets were improved in those days, not even Main street.

Q. Do you know that Horner street went to Toms River? A. Yes.

Q. Do you know Allen street? A. Yes.

Q. Do you remember that street going to Toms River? A. I put it in this way: Water street went across the end, properties are on the north side, and probably their deeds called to high water mark, but that was on the edge of the road, but it is a good ways off now.

Q. Does Allen street now go to the river? A. No.

Q. Does Horner street go to the river? A. No.

Q. What is to prevent them from going to the river? A. There is a fence to prevent Horner street from going to the river, and the boat house at the end of it.

Q. What prevents Allen street? A. Water street crosses the end at the foot of the hill and then it is docked off and filled in. It was different when I was a boy, the water came right along Water street.

Q. Have you looked at the map there on which the Riparian Commissioners have made grants? A. Yes, sir.

Q. Have grants been granted right in front of this street? A. They have.

Q. Does the map show to whom? A. I will explain that; presumably Mrs. Beatty's line takes in half of Allen Street. They have a grant. Mr. Brandt's line takes the other half; he is filling in but has no grant as I understand it; it is not on record.

GEORGE H. HOLMAN sworn.

A. I will state in reference to the Central railroad, I have looked over my record to find a grant to the Central railroad for the land on which they have made the fill, and I fail to find any such grant on record.

BY SENATOR MINTURN.

Q. How long is it since they filled in there? A. Six years.

Q. Their filling in resulted in a complete change of the formation of the river line? A. Changed the formation of the river line and changed the location of their station.

Q. What change did it make in the line—did it take away from the river? A. I think it took ten or fifteen feet of the river and narrowed it that much.

SENATOR MINTURN.—Any other witnesses?

MR. HOLMAN.—Nothing else, I believe. On the part of the Board of Trade I thank the Committee for coming here.

Adjourned to meet at the State House in Trenton, on December 21st, 1906.

SENATE CHAMBER, STATE HOUSE.

Trenton, N. J., December 21, 1906.

Meeting of Special Committee of the New Jersey Legislature to Investigate the Granting of Riparian Lands by the State, etc.

PRESENT:

SENATORS WAKELEE (chairman), and AVIS, ASSEMBLYMEN BARBER and JONES.

CHAIRMAN WAKELEE.—The Committee wants to announce that they are willing to hear anybody who desires to be heard.

MR. H. A. SMYTH-MARTIN.—Mr. Chairman, we think it is necessary to have—

SENATOR WAKELEE.—Do you desire simply to make a statement or do you want to be sworn?

MR. MARTIN.—I have applied to be heard; it is for you to say whether you want me for a witness.

SENATOR WAKELEE.—You are going to give us facts as well as make a statement?

MR. MARTIN.—I am going to give facts.

SENATOR WAKELEE.—Then you had better be sworn.

The oath was then administered to Mr. Martin by the Chairman.

MR. MARTIN.—Will it be necessary for me to wait until some other meeting of the Committee? I see there are a number absent. This matter was taken up in a previous hearing.

SENATOR WAKELEE.—The testimony will all be printed and the members of the Committee will all have copies of your statement.

MR. MARTIN.—I represent the Water Front Improvement Company and also the Water Front Realty Company, and as our name indicates, we are in the business of buying water front and meadow lands. As the result of our work the past six years, I wish to state that we have about thirty acres of land in the Borough of Edgewater. We have bulkheaded this—

SENATOR WAKELEE.—Where does your Company operate?

MR. MARTIN.—We operate in the State of New Jersey entirely.

SENATOR WAKELEE.—On the Hackensack meadows or the Hudson river?

MR. MARTIN.—On the Hudson river, our operations have been confined, up to the present time, in Bergen county. We are now thinking of operating in Hudson county as well. At the present time we have to show, for our six years' work there, about thirty acres of land bulkheaded up and filled in. We have increased the taxation by so doing 2,450%. We have erected on the property factories to the amount of over four million dollars, and you may judge from that that it is rather important to encourage factories to come to the State of New Jersey, and companies to redeem the meadow land and make it ready for the manufacturers.

SENATOR WAKELEE.—What are those factories or plants?

MR. MARTIN.—One is called the New York Glucose Company; the other is Pyle's Pearline. Those two factories have expended money. In regard to the four million dollars of taxes, you can take that in Bergen county—

ASSEMBLYMAN BARBER.—Is the assessed valuation $4,000,000?

MR. MARTIN.—The assessed valuation I cannot tell. The increase of taxes last year over the year I first bought the property is an increase of 2,450%. I do not think they tax to the full amount there. I don't know.

We have further extended our operations by buying sixty acres of land just north of the other property, and we have a water front there of over 500 feet. We made application to the Riparian Commission to give us a grant for this amount, five hundred feet, and we expected to get it at the same price we had previously gotten our grant for. In one case we paid $40 a front foot. In the case of the Pyle's Pearline we paid $60 a front foot. The Riparian Commission was good enough to award us a lease convertible into a grant in 1905, which we have never refused, for $150 a foot. Just mark the increase, from $40 a foot one year, and $60 the next year, and two years after that at $150. While that practically killed our enterprise, it is only because we saw an opportunity to put factories in there now that we have accepted that grant at $150 a foot. As I said to the Chairman of the Riparian Commission, "you have justified your existence in that one transaction."

SENATOR AVIS.—When did they give you the price of $150 per front foot?

MR. MARTIN.—I think it was in November. I can read to you my letter of application to them.

SENATOR AVIS.—My only idea was to ascertain whether it was recently or some time ago.

MR. MARTIN.—It was October 12th. I have a copy of the application here. I stated in this, my second application to them, that that meant to the school fund $100 a week, fifty-two hundred and some odd dollars interest on one hundred and seventy-five thousand dollars at seven per cent. They didn't seem to object to that. I do. I have accepted it; that settles that.

Now, for the last year, I have worked simply with factories to bring them to this piece of property, but I can't get anybody to settle there on a lease. No one will take a lease and build a factory there and go to the expense of bulkheading, the expense of filling in, and the expense of dredging, after you get your alleged water front, which is a mud front along there. These expenses are so excessive that no one would do it, for two reasons. No sound business man could get any backing, any assistance financially. Both these companies there mortgaged their plants. The Pearline Company issued bonds and only did so by paying off the mortgage and I have a letter which answers the question which was put to me the other day by the Riparian Commission, how soon will you exercise your right to convert this lease into a grant? I said just as soon as the property is sold from time to time, or as soon as we get the ready money. I said we are carrying a very heavy piece of property, sixty acres, and out of that sixty acres we have eighteen acres of meadow land; all the rest is the side of a hill. We are going to take down the side of the hill and throw it into the front, as soon as we can, and fill in back of the bulkhead with ashes, if necessary.

Now, gentlemen, I do not want to take too much of your time. I want to say, after years of experience in developing property and selling it to factories, I have not met one manufacturer who would consent to build on it. I can put in the hands of the Chairman letters signed by manufacturers there, stating that they would not have established there if they could not get grants on property along that coast. Now, I do not think the proverbial fellow who builds his house on the sand would be anything more than a monument of wisdom compared with manufacturers building on leased ground. He has got to bulkhead and then place his factory there; put piles in. The expense is enormous. It is our final decision; we will not take a lease convertible into a grant for our business. I thank you, gentlemen, for your kind attention.

ASSEMBLYMAN BARBER.—In your opinion as a property holder there, would your property be developed if the State should

undertake the development of the riparian lands and should construct public wharves and docks along there?

MR. MARTIN.—It is not public wharves and docks that you want. It is a long bulkhead of five hundred feet, and it will cost in the neighborhood of $25,000 an acre to develop that property. If the State did that, they could never get a lease sufficient in amount, any compensation in leases sufficient to repay them for that. No manufacturer or industry could afford to pay such a price. We could not afford to take it at $150 a foot, if it were not for the fact that we have got forty-two acres of back land we could put in with the front and make one big water front enterprise.

ASSEMBLYMAN BARBER.—The development of the land would have to come first?

MR. MARTIN.—Absolutely.

ASSEMBLYMAN BARBER.—Before the wharves or bulkheads?

MR. MARTIN.—There isn't any public street on this property; we run back 1600 feet from the river.

SENATOR WAKELEE.—I want to bring out the fact that the majority of these big places along the Hudson river are not entirely built on land covered by water, or connected with the uplands in some way; is that so?

MR. MARTIN.—Yes, sir; it is not wholly, or anything like wholly built on the upland that the Riparian Commission had jurisdiction over; it is on that portion which is above high water.

SENATOR WAKELEE.—Whose plant extends further?

MR. MARTIN.—I was going to say that Pyle's extends further to the south, half meadow and half under water.

SENATOR WAKELEE.—By meadow you mean land which the State has nothing to do with?

MR. MARTIN.—Absolutely, land above high water, held by us in fee.

SENATOR WAKELEE.—Are you familiar with the plants above you that you are not interested in, those other large plants, are they not also largely built on the upland or meadows as you call it as well as on the State riparian lands?

MR. MARTIN.—Valvetin Steel works is built almost entirely on the upland; there is a little piece jettied out there, but not a very great piece.

SENATOR WAKELEE.—What is your idea of the rights of the State to the upland? Do the owners of the upland think the State has some interest in that upland?

MR. MARTIN.—Well, we would certainly put up a strenuous resistance for taking what belongs to us. We bought that with ri-

parian rights and they have got a riparian grant, but whether the State has that right or not has never been properly tested, in my opinion. They have to go over my land to reach it and I wouldn't permit them to do that. There is no public highway on my place. We have between the river road and highway nine acres, then our riparian rights. We have eight or nine acres, eight or nine, I think.

SENATOR WAKELEE.—Have you interviewed those large companies that built these plants to find out their opinion whether they would build on leased land?

MR. MARTIN.—I have seen them and every last one stated that they never would have come to that locality and never would have built on a leased ground. Why, Mr. Chairman, a man would not put up a million dollar place, he couldn't do that on leased land unless it was for nine hundred and ninety-nine years and then he would not do it, because at every renewal he would be subject to a raise, and he never could finance it, and never have any credit. What he has is on some one else's property, and he might have to move off at any time.

SENATOR WAKELEE.—What is the life of these improvements? What is the permanency of this filling in? Will it last for ten years or a hundred years?

MR. MARTIN.—Well, it is perpetual; the only thing is that if boats come in and break the piling you renew that piling. You can see that all along the land that is bulkheaded. A first class structure is enduring forever with the necessary yearly repairs.

SENATOR WAKELEE.—Isn't it a fact that in front of this riparian land it is a pretty expensive operation to keep the channels open and keep it dredged out?

MR. MARTIN.—I can give you two instances which I have obtained from my neighbors. I went to the Consolidated Gas Company, my neighbor on the south, adjoins us on the south, and I said, would you be good enough to show me what it costs you to keep this place dredged, and called up Mr. Gottner and asked him to give Mr. Martin the information he required. They show there of an average between $8,000 and $12,000; a regular average of $1,000 per annum to keep that dredged out; they have 484 feet of water front. My neighbor, the other side, stated that it cost them over $20,000 to dredge it. As he remarked, that was the interest on $400,000 per annum. Those are the investments you have got to be ready to make every year. If the State of New Jersey went into that they would have to take that into consideration; they would have to do the dredging. We haven't got cinder along that water front at all; we have got a mud front; and fur-

ther down the channel comes into the shore, from a thousand to twelve hundred feet from the shore, and is mud filled.

SENATOR WAKELEE.—What is your purpose this morning, just to renew your protest against leases?

MR. MARTIN.—To renew my protest against leases, and request that the Committee raise the embargo put upon the Riparian Commission and permit them to make leases convertible into grants as far as we are concerned, as we made our application in 1905.

SENATOR WAKELEE.—When was the price fixed?

MR. MARTIN.—Right then; that same day.

SENATOR WAKELEE.—No papers ever passed; you never got your lease?

MR. MARTIN.—I never refused it, nor I never said I would take it.

SENATOR WAKELEE.—Your position is, you have an offer from them still pending?

MR. MARTIN.—Still pending and antedating the life of this Committee.

I met the Riparian Commission at this State House here; the Attorney-General and the Governor were present and they said it would be necessary for me to get this Commission to agree, this Investigating Committee to agree, to withdraw that request that no grants be made and no leases convertible into grants be made until the Legislature should act. In the meantime this blocks all grants. I know, personally know, of two factories, both gone to Staten Island and New York. I could have landed either one over there.

ASSEMBLYMAN BARBER.—Mr. Martin, this Committee, I think in the judgment of its members, has no legal right to restrain the action of the Riparian Commission. We requested the Commission, pending the settlement by the Legislature of the State's policy with respect to this land, to make no further grants or leases. We removed that part relative to leases because whatever policy is found and determined upon by the State it will not affect leases, that is, if they want to grant leases undoubtedly they will have that privilege. It is possible that the Legislature may deprive them of the right to make grants in fee. Now, if you have previously received from the Commission practical assurance of a grant, this Committee has no legal right to restrain the acts of the Riparian Commission. It seems to me the question is one that lies between you and the Commission. If they feel that the moral effect of our request binds them to such an extent that they are not justified in adhering to a decision that they took before this Committee was appointed with respect to a grant of land, why that is for them

to decide. I do not think, that the members of this Committee now, after the position they have taken, would care to assume another position that would indicate in advance the position they would take before the Legislature. If we, for instance, should adopt any resolution rescinding our previous acts, tell the Riparian Commission that we have relieved them of the burden that has been imposed upon them (if they consider it a burden) by our request; if we should do that, the conclusion would be formed in advance of any report we make that we have decided that this question is practically settled. I think the people would erroneously form that conclusion, I think it would be very bad to do it, and I think it would prejudice us in advance.

MR. MARTIN.—I make the same reply as I made before the Commissioners, the Governor and Attorney-General. I said, and I agree with you, that they have no right, the Investigating Committee has no legal right to stop the Commission from granting, but as a matter of policy during this investigation they have seen fit to put this embargo upon you. They replied that in the meantime with this embargo upon us we will not do anything in this matter, although we have the legal right to do it, unless we obtain from the Committee a recision of that request so far as you are personally concerned, and it is, for that purpose, gentlemen, I am here today.

This application was made in 1905. They awarded us the grant before this Committee was in existence and, consequently, no act of this Committee, although a matter of public policy, should keep me from having my just dues.

MR. WAKELEE.—As I understand you, you stand on the ground that you had practically entered into the agreement with the Riparian Commissioners prior to the passing of this resolution?

MR. MARTIN.—Yes, sir; before even the existence of this Commission.

SENATOR WAKELEE.—How much is there in the application; how much land do you need?

MR. MARTIN.—Five hundred and one feet.

SENATOR WAKELEE.—And you are willing to pay $150 a foot?

MR. MARTIN.—I am.

SENATOR WAKELEE.—That will be the largest price ever paid.

MR. MARTIN.—It will be three times the largest ever paid. The largest I paid was $60 per foot.

SENATOR WAKELEE.—It is the highest price you know of?

MR. MARTIN.—Never such a price. I would never take a lease; no one could do anything with leased ground. If the State would be good enough to develop it, I would lease it, but the State wouldn't do that, it wouldn't dredge it out, if they did, it would be of no use to us, it would cost $65,000 to put in bulkheads, and $10,000 more to fill it. We offered to take the lease and pay 7% on the lease to such time as we can take a grant of it.

MR. WAKELEE.—What is the name of your company?

MR. MARTIN.—Water Front Improvement Company.

SENATOR WAKELEE,—Anything else you would like to say?

MR. MARTIN.—The Water Front Improvement Company and the Water Front Realty Company are the same company; that is to say, they work together and are co-owners, but the title stands today in the Water Front Realty Co.

SENATOR WAKELEE.—Do you know whether the Riparian Commissioners themselves feel that they made a bargain with you that they ought to carry out?

MR. MARTIN.—They feel that point so strong that Mr. McLaughlin got up and made that statement and said: gentlemen, we have never changed our offer for that and it is accepted, and I move to give them a grant. That was here in this same State House, the other day, and the Governor wanted to hear more from the Attorney-General on that, and a decision must come from you and have the embargo raised, as far as we are concerned.

SENATOR WAKELEE.—There is nothing else you desire to say?

MR. MARTIN.—Nothing more, I thank you.

W. M. JACOBUS then asked to be heard, and addressed the Committee as follows:

Gentlemen, I want to call your attention to the matter of Colonel Tompkins. I think he made that pretty clear when he was here, and it seems as yet he has not had the necessary relief. Now, Mr. Tompkin's case is rather different from anything else probably that has come before you, gentlemen. I represent the Hackensack Meadow Company as their engineer, and also represent Mr. Tompkins as his engineer, he having purchased a piece of land from the Meadow Company. You, gentlemen, know that it is quite customary in developing land that there are certain improvements that go with it; we sell the curb and gutter rights and sewer rights with it. Now, in this particular case we deeded this piece of land to Mr. Tompkins running up to $77,000 with the understanding that the riparian rights would go with it. The application had been on file for two or three years; we have about five or six miles of frontage.

The application has never been pressed because there were doubts as to where the line would be fixed by the government. So that, during the period between the time of the sale and the time that your Committee placed this restriction on the Riparian Commission, we were not in a position to go ahead and now we are tied down. We have agreed to give Mr. Tompkins the riparian rights, and we are not permitted to do it. I don't know what the outcome or result of this thing is going to be. It is a very complicated matter and if you, gentlemen, could offer any relief in this particular case, we would very much desire it. I don't care to take up your time with any lengthy discussion; all we ask is immediate relief.

SENATOR WAKELEE.—The Committee has decided that it will adjourn until next Thursday, the 27th, at 2 o'clock and we request the Secretary to notify all members of the Committee, all members of the Riparian Commission, the Governor and Attorney-General, and also send notices, as far as he may be able, to all of the newspapers of the State that the Committee at that time will take up particularly the question of the advisability of the State changing its policy and in the future granting nothing but leases of riparian rights.

Up to this time there have been many people who have appeared here in opposition to leases, but there has no one either voluntarily or by subpoena appeared here in favor of the policy of leasing only, and we especially request that anybody in the State who knows anything about or is in favor of the policy of leasing the land, shall appear here and let us know why they favor that policy. Those that are opposed to confining the disposition of these lands to leases only are again invited to give their reasons to that opposition. We will confine that meeting to the general discussion of that one point.

The Committee then adjourned to meet in the Senator Chamber in the State House on Thursday, December 27, 1906, at 2 p. m.

SENATE CHAMBER, STATE HOUSE.

Trenton, N. J., December 27, 1906.

Meeting of Special Committee of the New Jersey Legislature to Investigate the Granting of Riparian Lands by the State, etc.

PRESENT—SENATORS WAKELEE, MINTURN and AVIS, and ASSEMBLYMEN BARBER, JONES and CROWTHERS.

SENATOR WAKELEE.—This meeting was called for the express purpose of considering the question of changing the policy of the State in disposing of these riparian lands, and in future only to grant leases and no grants in fee. It was especially called to give an opportunity to those in favor of this change to be heard, as well as those opposed, and the Committee has decided that we will now give an opportunity to anybody who desires to be heard in favor of changing the State's policy and in future only leasing these lands, as distinguished from granting them. Are there any here who desire to be heard? I might announce further that notice has been given of this meeting to all who are interested, to reach as many as possible.

(Nobody responded to the invitation of the Chairman.)

SENATOR WAKELEE.—We will then give an opportunity to any who desire to be heard on the other side of the question, namely, of continuing the policy of making grants as well as leases. Is there anybody here desires to be heard?

MR. HARRISON VAN DUYNE, of Newark: Mr. Chairman and gentlemen of the Committee, I desire to be heard on that side of the question.

SENATOR WAKELEE.—Do you represent the Board of Trade of Newark?

MR. VAN DUYNE.—I belong to that Board, but I do not represent it. I represent the Nairn Linoleum Company, which is located on the Passaic river near the upper end of the city of Newark, but on the opposite side of the river, in Kearney. It has made application for a grant in front of two or three hundred feet of additional

water front that it has lately acquired. It seems to me that the history of the Nairn Linoleum Company, and its location on this river, perhaps more fully illustrates the advantage to the State of making these grants than most any other case I know of.

I would like the Chairman and the Committee to get in their minds the location, if they haven't it already. You probably have visited the Soldiers' Home in Kearney, up the Passaic river. The Nairn Linoleum Company is now located adjoining and immediately below the Soldiers' Home, and the property that it acquired, the two or three hundred feet of water front that it acquired, and which is sought to get a grant for the land under water in front of it, some months ago, is immediately adjoining the Soldiers' Home on the other side.

Now, in a very brief way, this is a little of the history of the Nairn Linoleum Company. It located perhaps half or three-quarters of a mile up the river above where docks had already been built, some twenty-five years ago. I don't believe the tax value of the land it located on was then more than five hundred dollars per acre, and I suppose their plant covers about twenty-five acres of land. It, of course, received a grant from the State for its water front at seven or eight dollars per foot, and built its docks, and has been there in possession since. That property, including its dock front, has grown from paying a mere nominal sum of perhaps $150 to $200 in taxes a year, it has grown to this year to be assessed at over $600,000, paying nearly $12,000 per year to the town of Kearney.

Now, in talking with the President of the Company in reference to this grant, I found he hadn't noticed the course that had been taken in holding up any further grants. The application was put in and he didn't hear from it. I happened to be the engineer for the Company, not the counsel, and when he understood the situation he was surprised and said: "I don't see how our Company would by any possibility be justified in building this dock, making the outlay that it would require for a lease of twenty or twenty-five years."

The conditions are these, that the main cost of getting a dock of this kind is in the construction and filling in. It is not in the little strip of ripa or shore front which has been acquired, probably fifty feet from the road to the water, and it is not in the value of land under water, that is a very sure thing. That land, although adjoining property which paid taxes on a very large sum during these twenty-five years, that land under water has not paid a cent of taxes and to the town of Kearney has been absolutely dead. Now,

the President says to build that dock and fill in the land and make it actual property, the outlay in cash will pretty nearly represent the value after it is done, and for our Company, for me to advise our Company to do that, with the idea that we would only own that dock for twenty years, why it seems to me absurd.

The other position is well illustrated by the Company in what it has done on the property it has already acquired by grant from the State.

Now, the question as stated is, that the State should reap the benefit of the increase in this property, but the increase mainly is the actual dollars and cents outlay in the building of the dock; that is the main increase. Of course, after the dock is built and there comes a new growth around that property, it is reaping benefits just the same as the property—the owner of the property at the corner of Broad and Market streets reaps benefits, and as it increases in value; the town of Kearney reaps the benefit in the increase of taxes that are paid in annually.

Suppose the conditions had been as proposed now when the Nairn people looked at that locality on the Passaic river where they would have to build an expensive dock, and at the end of twenty years they would not know whether they owned it or not. I have no idea that they would ever have located in Kearney and added to the tax values of Kearney. Talk about the savings of the school fund; it is not the State that needs money, it is the municipality, and when Kearney gets $12,000 a year, where before nothing was done on this land and it only got $150 to $200, you see the difference is so tremendous that any benefit that Kearney would get from the price of leasing this land, was as nothing compared with the $12,000 that it is getting now.

So that in my judgment it is tremendously against the interest of any municipality to have its water front put in that position of a leasehold, unless the State is in the position of being ready to buy the shore front. You must remember the State could not get on its property except from the water side, unless the State is ready to put itself in the position of buying the shore there and building the docks.

Then, of course, an entirely different proposition would be before you, and it would be fair if they could find tenants for the purpose of paying a fair rent on that outlay; but that is not the condition at all, as I have shown the people are expected under twenty years' leases to make all the value and then lose it, and it is absurd.

This property of the Nairn Linoleum Company, as I have stated, is located up the river; they located at least 25 years ago. There

are several docks that have been built in that time, and there is a continuous line of docks that haven't been in use for twenty or twenty-five years. Suppose we take the other proposition and the State attempts to judge how much dock property was wanted, and goes ahead and builds it, and has property of this kind on hand without an income. Then you would see the absurdity of the position.

Now, I have felt in reading the papers in reference to this matter—we all recognize the papers as the moulders of public opinion —I have felt that the papers have, nowhere that I have read, stated that side of it. It was so easy to talk about the school fund, and the State dissipating its great school fund and talk of that kind. But they fail to state that the value of the land is made by the money of the man that gets the grant, in the outlay he makes in building the dock and filling it in.

One of the members of the Committee asked me if I was from the Board of Trade. To show how public sentiment works in reference to a matter of this kind, I was in the Board of Trade one evening in Newark and there was a large turnout. A resolution was offered along this line of condemning the present State plan of giving grants, and instead favoring leases. At first it seemed as if every one of our business men there in Newark was in favor of that change of plan. There were a couple of men there that stood up and stated this view of it, and after it was stated the vote was almost unanimously with the present plan. They hadn't stopped to think that the man that builds the dock puts in his money and not the State's.

Now it has been the policy, of course, from time immemorial in the city of Newark, and in every city, to favor having its water front docked out and improved as a direct advantage to the city, and for very many years practically the whole main front of the city was occupied as docks ; there never was a penny paid for it ; the city and the State in taxation reaped the advantage of the great value created on that property that had never paid any tax before.

Now, to go back to the Nairn Linoleum Company, as I said, I don't think there is another dock up the river used for general business purposes on the Hudson side of the river, further up than its dock, partly for the reason that the water gets more shallow as you go up, and if you notice, the general Government reports, and the course that is being talked of being pursued by the Government, the channel of the Passaic is to be deepened up to the Nairn Linoleum Company's dock. Of course, the hope is that when they get it deepened that far they will soon go further up. But, as I said, there

has not been a single dock, although this Company came there over twenty-five years ago, there has not been a single new dock or grant asked for further up the river.

Now, if this land under water is of so much value, of course, it would be awfully desirable to the town of Kearney if it got an annual income from it in the way of taxes, but it absolutely gets nothing from it, because the State's land is not taxable, and it almost seems to me that if the change is made as suggested, that the taxation question may very soon enter into and be a serious problem to the town in which the docks are situated. Supposing a case, that the river is lined with docks a mile along the river front. If after twenty years they should revert and belong to the State, why the State property is not taxable ; the State is rich and the township is poor and needs the money and wouldn't get it.

So that I think in any way you look at it, if you come down to the figures and facts, and not talk generalities, it is the interest of the State of New Jersey, it is the interest of the town where these properties are situated, that these grants should be made as heretofore, so that the actual title out to the dock line is acquired by the owner just the same as other property. If it increases in value it increases because he has brought his business there, and he is entitled to the benefit of it just the same as any other owner.

That is about all I have to say. It seems to me this question should be determined along very simple lines. Of course, the interest of the State comes first, but the interest of the State is so tied up in the interest of every municipality that where the interest of the municipality so greatly predominates, as it does in this case, it should be looked after, and next the interest of the citizens, and the citizens are the State after all.

SENATOR MINTURN.—When was your application for a grant made?

MR. VAN DUYNE.—I think about six months ago, and I think the dock would have been well under way if the grant had been made within a reasonable time, and I think I know beyond question that they would not feel justified in doing anything with that piece of property under a twenty years' lease.

SENATOR MINTURN.—Was your application filed before this Committee began its sessions?

MR. VAN DUYNE.—I think it was some time before ; it may not have been.

SENATOR MINTURN.—How long have you been the owner the upland adjoining the river?

MR. VAN DUYNE.—The Nairn people have been located where they are now for twenty-five years or more. This property they bought within the last two years to extend their water front.

SENATOR WAKELEE.—For the purpose of extending their plant?

MR. VAN DUYNE.—Yes.

SENATOR MINTURN.—It adjoins their plant?

MR. VAN DUYNE.—It does not immediately adjoin; the Soldiers' Home property, as I mentioned, comes in between, but they could not buy on the other side. There is a small factory on the other side, and they could not buy on that side, so they bought, skipping the width of the State Soldiers' Home plot, some four hundred odd feet, and I really think that they bought this with the hope of acquiring more land and increasing their plant on that side of the Soldiers' Home property.

MR. FREDERICK SEYMOUR, of East Orange.—Mr. Chairman and gentlemen of the Committee: I desire to say that I represent one of the applicants for a riparian grant. I want that understood, because I would not want to appear here as speaking upon a public question without disclosing the fact that I am interested in it; and to the question whether there shall be a grant or a limited lease, it seems to me there can be but one answer.

SENATOR MINTURN.—Which applicant do you represent?

MR. SEYMOUR.—I represent the Bulls Ferry Chemical Company, in Bergen county, at Edgewater, and in order that the Committee may understand the physical facts about that matter, not because it is my matter, but because it is a typical case, as I understand from the Commission, of the physical facts respecting a large part of the shore of New Jersey, almost all of it on the Hudson river, and a large part of that on Newark bay, I desire to submit these facts. The speaker submitted to the Committee a survey of the property mentioned.]

You will see from this tracing we have had soundings made both upon the property itself and out into the water; that the upland itself is nothing but silt; that at the shore line there is upward of 40 feet of silt; that for four hundred to five hundred feet out there is but two feet of water over the silt, and that as we get out to the bulkhead line there is 144 feet between the top of the water and bed rock, and almost all of it is silt. That silt is not the stuff that has come down from the Palisades, it is the soft mud that has washed down the Hudson river and deposited there.

That is an important consideration for this reason, as reinforcing

what the last gentleman has said, that the cost of improving the property is a great item. You will notice upon that tracing that the people immediately to the north of us have commenced to improve their property, and their dock is shown, and it runs out about a hundred feet from the shore line. It is probably impracticable at the present time to improve the property and fill it in out to the bulkhead line, because you can't hold that stuff in, it is soft running mush or mud, and the property can only be improved out to the bulkhead line, as the neighboring property is improved, and it comes out all along the shore line, so that one property will support the other, and so that at the bulkhead you may devise some means there in the hundred feet of silt, besides twenty-nine of sand, to hold that silt back so that it will not burst out into the river.

That is characteristic of all the property along there. It is characteristic of a large part of the other property which the State owns, particularly the property on the Hudson river and the property on Newark bay.

SENATOR MINTURN.—That mud does not run back into the Palisades.

MR. SEYMOUR.—This property runs from the river front back to the river road, and then the Palisades rise there. The mud and silt does run back over all our plot.

SENATOR MINTURN.—Do you own all the property back of the road, between the road and the Palisades?

MR. SEYMOUR.—No; we do not. At that point the road runs just underneath the Palisades. They rise immediately from the road and we commence at the road and run out to the river.

SENATOR MINTURN.—The road is a county road?

MR. SEYMOUR.—I think it is; yes, sir.

SENATOR MINTURN.—How can you be said to be the owner of the upland within the meaning of the act?

MR. SEYMOUR.—I don't know; we have bought it and paid for it and it has been occupied for many years with a small plant there, and the chain of title runs back—

SENATOR MINTURN.—Then there is a space of land between the road proper and the river?

MR. SEYMOUR.—There is a space of upland which lies about 18 inches above high water, and a very high tide will just about touch the top of it.

SENATOR MINTURN.—And you have built upon that?

MR. SEYMOUR.—Yes; it has been occupied and the chain of title runs back way into the 1700 somewhere. I haven't it with me, but I have no doubt that it has for more than a century been regarded

by the State and the general public as upland, that it has been occupied, and for many years small factory operations have been carried on there. Nevertheless, the top, commencing with a depth of about nine feet back near the road to about forty feet at the shore line, is of this same character of soft mud, except that it has settled and become more consistent than that under the water.

We have gone so far as to get estimates upon the cost of some improvements there, and to start that bulkhead out where we get 70 or 80 feet of silt, which is about all that you can do, probably more than you can do with ordinary piling, and running out about 150 feet instead of 900 feet to the bulkhead, we must put in $100,000 for bulkhead and pier. If we should attempt to carry those improvements out to the bulkhead, the cost would not be less than $350,000 to $400,000.

The Riparian Commissioners have nearly trebled the value of any previous grants per front foot in that locality, and have said that the value of the land under water is $150 per front foot, or about $50,000. That, as I said, is nearly three times the value that had previously been placed upon any property in that locality.

SENATOR MINTURN.—What is the value of the land adjoining, according to the sales of the Riparian Commission?

MR. SEYMOUR.—As I said, this is nearly three times what was paid by the owner of the upland for the immediately adjoining property, and that I say was more than any other property either above or below. No such price has ever been attempted or thought of or suggested with reference to any of the properties in that locality until this application was made, when we were jumped from the neighborhood of $60 to $150. I think $60 was the highest that had been paid anywhere within a mile of that property.

SENATOR MINTURN.—When was that paid?

MR. SEYMOUR.—I think shortly before we made our application. Our application was made about two years ago.

SENATOR MINTURN.—Has your application been pending two years?

MR. SEYMOUR.—Our application has been pending two years. A good part of that time we have been trying to fight down this price; we thought it was unfair and unjust, jumping us from $60 to $150, but we were never able to persuade the Riparian Commissioners to take our view of the matter, and we have, therefore, accepted the inevitable, and so far as lies in our power, have accepted the valuation which they have put upon it. It would be, it seems to me, the height of foolishness for us to accept a lease of 20 or 25 years for property the extreme value of which is now placed

at $50,000, when to utilize it we must put from $350,000 to $400,000 of additional value upon it; not in buildings which will deteriorate, not in the superstructures, but in the making of this land under water land above water so that it can be used for putting buildings there; so that it can be used for any purpose whatever. If we should have a 20 or 25 years' lease for nothing, I don't see how any man would be justified in sinking there $350,000 to $400,000, which would become the property of the State at the termination of that lease, unless the State is prepared to say that it will buy from us the land we have made there at that time. Of course, I haven't given that any very serious consideration, in view of the fact that the proceeds of the riparian lands are devoted to the school fund, but I have had some difficulty in seeing where the State would get the money to do it. I suppose it might be appropriated from the general fund.

SENATOR WAKELEE.—Suppose the State gave the right of the the renewal of the lease under an appraisement by arbitrators or otherwise, what would you say?

MR. SEYMOUR.—I should still say that we would not sink into that mud hole that amount of money and submit it to the arbitration of other people as to whether we should lose that investment or take a renewal lease at the appraised value. That would work all one way. We would have our money there; we could not get it away; we could not pick up the fill we have there, we could not pull out the pilings, we could not take away the caissons that we had there; we could not do any of those things, and when the term of the first lease was up and there was a re-appraisement, we would have to take it as re-appraised, whether it was just or not, or else lose our investment.

SENATOR MINTURN.—But you would get the value of the land you put there.

MR. SEYMOUR.—If the State should buy it.

SENATOR MINTURN.—The Senator suggested the State was ready to buy it at the appraisement.

SENATOR WAKELEE.—Let it be appraised for re-valuation.

MR. SEYMOUR.—But if the State is only willing to appraise the rental of it and then stand on one side with the chance of gaining all that we have sunk there in the way of permanent improvements which we cannot possibly take away, and we stand on the other side in the attitude of losers of everything that we have put there, I say that is a proposition which would not appeal to the investment of capital. And it would be so for this additional reason, as I have already said, it is not practicable to make the improvement all at one time, it is not practicable for us to push that land out to the

bulkhead line now, until our neighbors will also come along gradually with us so that we can hold in that silt and not have it ooze out both ways up and down the river and out into the centre of the river. And the improvement, of course, must be made from year to year, or from period to period, as the demands of commerce and business in that locality require, and it would probably be twenty to twenty-five years—I have no doubt it would be that much, before that property is improved out to the bulkhead line, and what encouragement would there be for us in the last ten or five years to go to the most expensive part of it, where the bed rock is 140 feet from the top of the water, and make expensive investments?

We would have to consider only making the cheapest improvements there consistent with the demands of our business That is the nature of the difficulty of that proposition. I meant to have brought with me the Government's survey of the harbor, but I think your Honors will take my statement of the fact that that survey shows that the channel of the river is 2,000 feet from the shore, the bulkhead is about 900, and the pier line is about 1,200 from the shore.

SENATOR MINTURN.—What is the depth of the water from the bulkhead?

MR. SEYMOUR.—Eleven feet, and it is about the same out to the channel of the river or to what is known as the twenty-four foot curve; it sags off slightly; but it is not much over eleven, twelve or fourteen feet until you come immediately to the channel. So that even from this bulkhead line 900 feet out from the shore we have got to dredge a channel to get into our own bulkhead; and have got to keep it open from year to year because this silt comes down the river and fills this channel, and our best advice is that it would cost us about three to five thousand dollars a year to keep that channel open after we have once dredged it, and that represents the interest at five per cent. on from sixty to a hundred thousand dollars.

SENATOR MINTURN.—What use do you intend to put this property to?

MR. SEYMOUR.—Factories and commercial purposes. My clients are very large, if not the largest, importing and manufacturing chemists in the city of New York, and they import partly from other countries and partly from the southern states in this country, large quantities of material which is used for tanning. It is a well known fact that the oak and hemlock of this country is practically exhausted. I think the most authentic reports show that in less than ten years the oak and hemlock will be exhausted and that

probably there is not over five years' supply in the whole country, and it has become necessary to import barks from other countries, and my clients bring them in. A large part is brought here from Florida, and some from Africa, and some from South America. It is brought in and either treated upon this property or extracts taken from it and shipped to tanneries throughout the country. I think their transactions in that line were upward of fifty thousand tons last year, and the demand for it is very rapidly increasing and is very hard to supply. They have there now a small—not a small, but comparatively small—chemical factory for various kinds of chemicals in which they are dealing. I would not want to say how many men they would employ, but for the bringing in and treating of fifty thousand tons annually it requires a considerable force of men. Of course, it would be somewhat machine work.

But I think there is a broader ground upon which this question ought to be treated. I don't claim it ought to be treated upon a specific instance like this, except it is typical of a large part of the other shore front, but I think there ought to be a staple policy on the part of the State. We bought that property supposing that we could acquire the right to come up to it with a boat. We thought we could buy the land under water in front of it, and the present policy of the State of New Jersey is the most stringent—from the property owners' standpoint—of the policy of any State upon the Atlantic coast, unless it be Delaware. I don't intend to go over the policies of those States, but if your Honors are interested in the subject, you will find a very careful and authoritative statement of it in the case of Shirley vs. Bowlby, 152 U. S. Supreme Court Reports, page 1. It is a long opinion, but you will find in about the middle of it a rather careful statement of the policy of each of the Atlantic States with reference to riparian rights, a very careful and learned statement. I don't know that you will find Florida there, I think not, but I happen to be interested in that subject as to Florida, and I find they have an act by which the State has by legislative grant made over to the owners of the upland the fee of the lands under water in front of their land. As far as Florida is concerned, that is the situation ; the State granted by an act of the Legislature to the owners of the upland all rights under water.

SENATOR MINTURN.—Gratis ?

MR. SEYMOUR.—Gratis.

MR. BARBER.—Have you any idea how long ago that grant was made ?

MR. SEYMOUR.—I think it was made within the last ten years.

MR. THOMAS MILLS DAY.—I happen to be a member of the Florida bar, and I can answer that; it was in 1856.

MR. SEYMOUR.—At all events, that is the law of the State of Florida today. The policy that we have here, as you very well know, has been the subject of growth, and a growth against the interests of property owners, the owners of the upland. I think it was the act of 1869—I am sure it was—which provided that a grant might be made, and by the 13th section of that act a grant might be made to others than the owner of the ripa, but it was provided that the purchaser, being other than the owner of the ripa, might not improve in front of the owner of the ripa without making compensation to him.

That act was subsequently repealed; I don't remember when, and it has come down to the point that it is thought that the State may grant these lands under water to anyone, and that they may shut off the owner of the ripa from access to the water.

Now, that is an unjust policy. It is a policy which no other State has adopted, so far as I know—I haven't examined them all. It is a policy which is not well understood, at all events, among the owners of the real estate, and one which, if used, if the Riparian Commissioners should make use of that power, if they have it, it would work great injustice to people who buy land upon the water just as they do upon the street, supposing that they might open their gate and walk out. And I think that this idea of limited leases has been the result largely of the great agitation which we have had in this State for limited franchises in streets.

It is certain with regard to all properties located like this that I have shown you, that the proposition of a lease or of a limited franchise, if you choose to call it such, is just as different and unlike the use of a street by a trolley company or by an electric light company, or by a telephone company, as it can well be imagined. We, of course, are not allowed to interfere as trolley companies are with the use of the highway by the public. We can only come out to this bulkhead line, and from there to the pier head line, and those are located well back from the thoroughfare. We are interfering with nobody. We are back where the State says it shall be land and not open river, back where the United States Government have said that the bulkhead line shall not go out beyond that point. We are out of the course of navigation, in the sense that we are out of the way of other people who want the use of the Hudson river. We are not in any sense using that highway in a way that a trolley company uses a street. We are simply putting there a structure

by which the people who use the highway may land upon the shores of New Jersey if they choose.

It seems to me that this right should not be confused at all with the idea of limited franchise in the public streets, because it is so different, it is not like it in any way. And I think in any event, that the policy of the State with reference to making grants should not be changed, and that if it were changed it would immediately stop all improvements which had anything of the sort which I have shown you upon this tracing. I thank you for your attention.

MR. FREDERICK W. HOPE, of Red Bank.—Mr. Chairman and gentlemen of the Committee: In behalf of many of the people down in Monmouth county, I desire to express their sentiments regarding this matter. We have watched with interest the improvements made along the rivers in our county. There have been many riparian grants acquired, and they have resulted in great benefit to the shores of the rivers. Our rivers are peculiar; they are shallow mostly, and very little of the property is used for commercial purposes, and the people acquire these rights as a matter of sentiment, in order that they may feel they own all that is within the territory. They don't like the idea of even the great State of New Jersey owning a little land or some intangible rights between their upland and the river or the bay, as the case may be.

I think in my experience in obtaining approximately 300 grants during the last twenty-seven years, that only about between ten and twenty of them have been for commercial purposes. They have been mostly in the counties of Ocean and Monmouth, most of them in Monmouth. Very few are for commercial purposes, very few produce a dollar of income; but the parties were induced to acquire them because they learned that the State of New Jersey has an intangible right there; that while having title to their land, there was still something in existence which they had not, and they wanted to acquire that. That sentiment has prevailed and they have acquired riparian grants. I know dozens and dozens of people who acquired rights along the Atlantic Ocean, who never anticipated using them in any way except in connection with their residence, and merely so that they could feel their ownership was complete.

Just so along the rivers where the water is shoal, and they never get a dollar income. If they make any improvements it is simply as an annex to their lawn and grounds, and they erect their bulkhead and improve the channel of the river by confining the currents, and it improves things generally. It does away with pest places and

unsanitary conditions, and the people desire this practice of giving absolute grants to continue. They realize that a limited grant or a lease not in perpetuity, or a lease even which is in perpetuity but which requires a rental, is not attractive. Those people would not want to pay seven per cent. on the money; they would not care for a lease on which they must pay rental annually or semi-annually; they would feel that it was an incumbrance on their property. They want to have what Blackstone tells us is so attractive to all human beings, the entire dominion and ownership over property. The people owning lands on the rivers want absolutely to own the riparian rights, or otherwise are willing for the State to continue to hold those rights and in that case they do not pay any money and the State does not get any.

In these cases perhaps Asbury Park, Ocean Grove to a small extent, and the steamboat landings along the rivers—certainly not more than a dozen or twenty out of about 300 cases in Monmouth and Ocean counties, have been for commercial purposes, and it is largely this matter of sentiment that is the inducement to people to acquire the grant. We have a large quantity of salt meadow and marsh which they are now draining under this system, and that which the State has in operation, and it may be they have been drained to get rid of the mosquitoes. The people hope, and it has been the effort of a good many of us to do away largely with these meadows, not only by this system of drainage, but by filling in the marsh, which is appurtenant to the upland. In many cases that has been the result of this system, which has been in force since 1869 and we trust that it will continue. We hope that you, gentlemen, in your wisdom will see fit to so recommend.

SENATOR MINTURN.—If this was a mere matter of sentiment with your people, why would not a lease answer as well as a grant?

MR. HOPE.—It does not give the ownership. They want to realize that no one can interfere, and they are not willing to have what is an incumbrance upon their property. If it is a question between leasing and granting, it seems to me that can be met very easily, particularly in these large commercial cases where property is valuable. You can get five per cent. for the money, the State can, you make a lease and you get seven per cent. rental, increase your price two-sevenths, and the same income will be produced for the school fund that they would get if they got seven per cent. annual rental.

Then there is another feature to that; people will not take for these large enterprises a limited grant or lease, which is a burden upon them, and particularly if it is one that is limited as to opera-

tion. We have experienced that. We have tried it frequently and it cannot be done, capital is cold, capital is timid, and what we want in New Jersey is to induce all the capital to come here that we can and locate along these rivers. It seems to me, gentlemen, that the State of New Jersey will make a mistake if it attempts to change this policy. It has worked well. If the prices are too low, let them be increased ; that would seem to me to be all that is necessary. Until these leases or grants are made of course the State is getting nothing. This land has been lying out here a long time without producing an income, and unless we make it productive, or someone comes along and takes a grant or makes a lease and contracts to pay the rental, the State will be out so much.

SENATOR MINTURN.—Does not that add to the value of your land, to get a grant from the State ?

MR. HOPE.—It does if you wish to sell it some time.

SENATOR MINTURN.—Without the land under water, is it worth as much as it is with it ?

MR. HOPE.—It adds a little to the value, with some people scarcely nothing ; with others they would not buy river front property unless they could get the entire ownership of the riparian rights from the State of New Jersey. There is a different view of that by different people. In one way it adds to the value that it gives to the entire ownership, but practically and for producing an income they use it no more than they would if they never had obtained the grant.

SENATOR MINTURN.—I can understand that argument so far as a manufacturer is concerned, but I can't see it from the standpoint of sentiment, what difference it makes whether you have a lease or a grant.

MR. HOPE.—If you have a lease you have to pay rental, and they consider that an incumbrance on the property and that there is something that they do not yet own.

SENATOR MINTURN.—But you don't pay taxes. If you have a grant you pay taxes and don't pay rent.

MR. HOPE.—We pay the taxes that are assessed on the property.

SENATOR MINTURN.—The present system is, that the owner, the man who pays rent for the lease, does not pay the taxes, is not that so, Mr. Cloke ?

MR. CLOKE.—I think the lessee pays taxes on the property, on his improvements.

SENATOR MINTURN.—But does he pay taxes on the land which he leases ?

MR. CLOKE.—I think he does.

SENATOR MINTURN.—That was raised in a case under the Martin Act.

MR. CLOKE.—But I will say that I don't know as much about that as you do. I presume they tax the land after it has been leased.

SENATOR MINTURN.—It was raised in the Grace King estate opposite Weehawken. We assessed the taxes and the King estate refused to pay the taxes on the land under water on the ground that they held it on a lease from the State.

MR. HOPE.—I never heard that question raised. In similar cases in our county they pay tax on that property same as any other property. It is not excluded or dealt with any differently from their upland and the other property they own. To answer the question of Senator Minturn, the difference is this: The idea of these people, if they are paying rental, is, that it is an encumbrance on the property, and if it is a lease, that is not in perpetuity and something which can be taken away from them, and they feel that they are leaving an encumbrance as it were on the property when it descends to their heirs, and that if they dispose of it it is liable to come back to them; if they sell it subject to this lease and the rental is not paid, the State can compel them to pay. There has been trouble of that kind. They wish to get an absolute grant from the State of New Jersey, that is more desirable and more attractive.

The experience and success of the system of making grants and leases in perpetuity, whichever the applicant perfers and is willing to pay for, resulting in great benefit to the school fund; all argue forcibly against any change in the present system, except to safeguard the interests of the State as to the prices for grants and leases.

MR. H. A. SMYTHE-MARTIN, of New York City.—Mr. Chairman and gentlemen of the Committee: There is one point which has not been touched upon, which is very important to any manufacturer who expects to settle on your shore, and that is, that it is quite impossible to finance an industry or issue any first mortgage bonds on leased property. You take the history of the manufacturing industries in New Jersey—they didn't start as they are now; they started in a small way and progressed. Today we are bringing manufacturing plants from other States, especially from New York.

In the case of the New York Glucose Company: I sold them that property at Edgewater and they said to me since that they

would not have bought it if it had been based on a lease. They issued first mortgage bonds. They could not have issued these bonds and floated them if their factory was built upon leased ground.

The Pyle's Pearline : I sold them a piece of property alongside of the property that Mr. Seymour spoke about at Edgewater. They could not have issued bonds on the good will of their business and property and obtained a loan if they had a lease instead of a grant. They stand today with a fee simple title, and Mr. Pyle will tell you he would not have considered a lease.

The Water Front Improvement Company, which I represent, owns sixty acres north of the property Mr. Seymour spoke about, and in the same neighborhood, with eight acres of land under water. I made application in 1905 for a grant to 501 feet, our total water front, expecting at the time to sell a portion of it to a factory. Since I appeared before you last week those gentlemen have withdrawn on account of the great price I asked them for a riparian grant ; as you asked me $75,000 for my water front, I asked them the same, that is $150 per foot.

It is impossible to bring manufacturing industries into the State of New Jersey under any consideration on leased ground. Our business is to buy water front, bulkhead and fill it in. We go to that enormous expense and then we go to people in New York and say to them, "You can sell your property and move across the river, which is just as advantageous to your business, and make money by doing it." I have now tried, for over eighteen months, to sell leased property at Edgewater and it is impossible. I can bring you many written statements, and I have put in your Chairman's hands several of these statements, that no one would attempt to build any factory or make any improvements on leased ground.

You take the instances of the Glucose Company and the Pyle's Pearline, the taxes have increased since the day I took hold of those fallow meadows and bulkheaded them and filled them in, and they have increased in taxable value 2,450%. I paid for the water front immediately in front of the Glucose property $40 per front foot ; I paid for the Pearline water front $60 per front foot. Now, the new Riparian Commissioners come in and they sit tight and won't let me have anything for less than $150 a front foot and I agreed to pay them that.

In the meantime, owing to the delay in giving grants, the Riparian Commission has lost the State two factories that I had agreements with to purchase; they have gone, one to Connecticut and the other to New York State; Staten Island.

I am still willing to take a lease convertible into a grant, but no

lease exclusively. I would rather let the mortgage be foreclosed as the upland would be useless. If you give me a grant I am perfectly willing to bulkhead it and fill it in and get it ready for market.

SENATOR MINTURN.—Is that the same property that Mr. Seymour represents?

MR. MARTIN.—No; it is not the same; it is along the same coast. I owned the piece next to him, and then comes the Pyle's Pearline, and next to that is the Barrett Manufacturing Company, then the General Chemical Company and then the New York Glucose Company and the Consolidated Gas Company and the Water Front Improvement Company. I am 3,000 feet above the Hudson county line and in Bergen county, and I think 1,200 or 1,500 feet above Mr. Seymour's clients' property.

In front of my property I have no water front. I have only mud front at the bulkhead line; it is absolutely bare at low water. I took the Riparian Commissioners up on one of my tugs and showed it to them and they saw how undesirable it was. At low water with a west wind there is no water there.

My neighbors on the south pay out $10,000 a year for dredging, that you can verify at the office of the Consolidated Gas Company. They have only 484 feet, my piece is 501 feet. My neighbors on the north have got a little more property, I think it is eight hundred and some feet, and they have paid out annually $22,000 for dredging. That has been their average for five years. That you can verify at the Erie railroad office.

It is not only the first cost of water front property when you get it; then comes the riparian cost; then the cost of construction, and that property when I get through with it will cost me $35,000 per acre plus the annual dredging cost. There is nothing in any manufacturing enterprise to warrant such an expenditure, the only reason I can do it is that I have forty acres back of there which I wish to develop by taking down the side of the hill and level it off, so that this ridiculous expenditure will possibly be evened up. But as I said before I am willing to take it today at $150 per front foot, a grant, but absolutely no lease. My experience has been, day after day going to manufacturers, that no one will look at it so long as it is only leasehold. That property will be for sale, as soon as I get my grant, to any manufacturer that wants to come in.

If you gentlemen would like to ask any questions, I will be glad to answer them.

SENATOR MINTURN.—As I understand, you are waiting for the grant now?

MR. MARTIN.—Yes.

SENATOR MINTURN.—You are simply held up by the restrictions imposed by this Committee?

MR. MARTIN.—Yes, Senator, and I appear before you to ask you to raise the embargo. I am willing to take it, and I made my application nearly a year before the appointment of the Investigating Committee, and it is spread upon the minutes of the Riparian Commission, and this embargo was put on it and that settled it. I have stopped arguing with the Riparian Commission as to price; they have it their own way; they have raised it from $40 and $60 to $150.

SENATOR WAKELEE.—Your idea is that $150 is too high, but the force of circumstances are such that you will pay it?

MR. MARTIN.—It is a good deal like a man on the highway who puts a pistol to your head, you have got to give up. I have got that water front, it is useless to me. I have $250,000 invested there now, I must kiss that goodbye or buy that which is front of it for $75,000. They know it and they have taken advantage of it, and here are two of them right here.

SENATOR WAKELEE.—Has anybody come in since we made the request, who cares to be heard in favor of the policy of leasing exclusively? We will be glad to hear from anybody else. This probably will be the last public opportunity to be heard before the Committee. The Committee is perfectly willing to have those who are here, and don't care to be heard at length, state whether they favor or oppose it, so that the minutes will show.

ALEXANDER J. SHAMBERG.—As the owner of water front property along the Hudson river, I simply want to appear as being against the lease proposition.

SENATOR MINTURN.—Do you recall, Mr. Cloke, where a lease has been made by the Riparian Commission subject to the payment of taxes by the lessee?

MR. CLOKE.—No; we don't put that condition in.

SENATOR MINTURN.—There is nothing said upon that subject?

MR. CLOKE.—No.

SENATOR WAKELEE.—The Committee will be pleased to listen to Governor Stokes.

HON. E. C. STOKES.—Mr. Chairman and gentlemen of the Committee: I have no statement prepared on this subject. I am sorry I was not here this afternoon to hear what I understand was a most excellent discussion of this important matter. This question of the proper disposal of the riparian lands, one of the State's assets, I

consider one of the most important ones, both from the State's point of view and from a commercial and industrial point of view.

New Jersey has a longer coast line in proportion to its area than any other State in the Union, and when you add to this the fact that the State is indented with inlets and thoroughfares and bays, you have materially increased the miles of water front. Nor should it be forgotten in this connection that the location of our State makes this water front most valuable and important. We have, as I understand it, in New Jersey, the termini of all the great trunk lines from the west and south except one, and that is the New York Central ; and when the transfer yard is constructed at Harrison or Kearney or near that section, a distributing point as it will be for the freight and passengers from the south and west and north, for New England and New York points and Europe, the value of our water front will be materially increased.

I feel it incumbent to say that the work of this Committee has been carried on in a painstaking and conscientious manner that ought to commend itself to the people of this State. The policy to be pursued in connection with the rest of our riparian grants ought not to be hastily decided ; it ought to be determined only after a most careful consideration of all views and after hearings upon the part of the citizens of the State and such gentlemen as we have with us today who are interested in inter-state commerce in this section of the country.

Mr. Cloke's paper on this subject appealed to me as a most impressive article, and I think that the Committee will do well to carefully investigate his line of thought and get a sufficient number of facts and a sufficient amount of data either to confirm his view or refute it. As you know, I have twice suggested, once in my inaugural and once in a message, the leasing of these lands. I have never felt that the policy of the State should be absolutely confined. My suggestion was that the Riparian Commission should have the option either to lease or grant in fee simple. I presume the Commission can lease under present conditions, but the difficulty is, there is no practical method of giving a lease for a short period that could be renewed in such a way as to induce capital to invest. I had drawn and introduced into the Legislature—it was not passed, however—a bill to correct this apparently insurmountable obstacle in the way of leasing, which provided that, in case of a lease, the lessee should have the first option to renew the lease at the expiration of the period upon an agreement between himself and the State, or, in the event of failure of the two to agree, a representative of the State and a representative of the owner—and

I think I suggested either the Chief Justice or the Chancellor should be the third party to settle the terms for a renewal. That plan seemed to me to make leasing at least practicable if commercial conditions warrant it. That, of course, would not compel the leasing of riparian lands in all cases, but would give the option of either a lease or grant in fee to the Riparian Commission.

I think it would be well for the Committee to take that idea under consideration. I can see some objections to an alternative policy on the part of the State ; some commissioners might refuse absolutely to part with the land except on leasehold, and others might be willing to grant in fee, and that under certain conditions would perhaps arouse adverse criticism.

I do not know what the purpose of the Committee may be. I presume you will make a recommendation to the Legislature on this line, outlining some policy, and I sincerely trust that that policy will not be decided until you have had a thorough discussion of the matter and give ample hearings to all parties, not only to our industrial establishments, but to the State as a State.

MR. HARRISON VAN DUYNE.—Mr. Chairman, may I say one word in reference to the plan of the Governor in regard to arbitrators ? If the lease was made in such a way that the arbitrators had to allow the owner for the money that he had put in for reclaiming, then, perhaps, there would be no great objection to it, but if the arbitrators are to take the land as they find it at the end of twenty years, and say, "What is that property worth today to anybody who rents it," without taking into consideration the great outlay of the man who built the dock and filled in, why there would be such absolute injustice that I don't believe a single dock would be built along the Passaic river above the present dock, unless the arbitrators will take into consideration the outlay.

SENATOR MINTURN.—You would consider that confiscation ?

MR. VAN DUYNE.—Yes.

SENATOR MINTURN.—I do not think the Governor or anybody else has that in mind. The theory of leasing is, that they take the land at the end of the twenty years with the added value that has been given.

MR. VAN DUYNE.—The improvement is there of filling in, and suppose they lease to somebody else, the man can't take it off ; and if he feels that he has been dealt with unjustly his money is sunk, and capital never would invest on that basis.

SENATOR MINTURN.—Could not his improvements be valued and returned to him by the new lessee?

MR. VAN DUYNE.—If you go into that question you get into such deep water that you will come back to the present plan as a better and fairer plan and the town has got the value of the increased property as it is improved.

GOVERNOR STOKES.—It is the same principle as the limited franchise.

MR. VAN DUYNE.—I do not think it is the same principle at all ; I do not think there is any comparison at all between them, between granting somebody the right of way through our public streets and this leasing of property, there is no comparison to my mind.

MR. SEYMOUR.—One word on this question of re-valuation at the end of the lease. If it were practicable to do this, that there shall be arbitrators at the end of the lease to value the State's land as it was when we took it, and to ascertain the value of the improvements upon the land which we have put there in the meantime—

SENATOR MINTURN.—I do not think those would be the proper factors at all.

MR. SEYMOUR.—We may differ upon that. If at the end of the lease the lands of the State were appraised in the condition they were when we took them, that is, the value at the end of the lease of the State's land, minus the improvements, and value also our improvements upon the land, and then say to the world, to us and everybody else, "You may have both of those at such a rental ; pay to the owner of the upland the rental for the improvements, and to the State the rental for its land." I say that would be fair because it is impracticable to separate them. We have put the value there, and as I said, upon that property which we have, which the Riparian Commissioners have valued at $50,000, we must put $350,000 to $400,000 to make it useful.

SENATOR MINTURN.—Under the present tax act the assessors are obliged to separate the land from the buildings and make the assessment of the land minus the improvements, and then assess the improvements, now where is the difference?

MR. SEYMOUR.—This becomes land itself. I am not talking about the superstructures, but here is solid land a hundred feet below the surface of the water, which is covered to that depth with soft mud, which has got to be made something else than soft silt, which it is now, and the filling unquestionably must be land as distinguished from buildings. We take land from some other place and put it there.

SENATOR MINTURN.—You are assessed now by the local as-

sessors for that without any improvements. You proceed under a grant from the Riparian Commission to improve it, and in a year the assessors come and re-value that land. What do they do? They take the old valuation minus the improvements, and then add the valuation of the improvements made during the year, so that the two are separate in his mind. Why can't that separation continue through the year?

MR. SEYMOUR.—I have no doubt it could. I do not think it would be difficult to separate the value of the State's land in the condition that we took it, and the value of the whole of it as you find it at the end of the lease. Then when you lease it anew in that condition, you say to us, you may have it at a certain rental; we say we don't want it, that is more than we think it is worth. You say to somebody else, you may have it; if that somebody else takes it he has taken the value that we have put there, and why should they not pay us the rental?

SENATOR MINTURN.—Suppose the agreement by the State was that they should pay you the value of the improvements at that time?

MR. SEYMOUR.—That would be satisfactory. I don't think anybody could object to that.

MR. VAN DUYNE.—Suppose, in the meantime, a large building has been put on it? You are getting into complications.

MR. SEYMOUR.—There might be complications where the owner of the upland will carry on an industry which will be a unit, covering the land and the land under water. It would destroy the unit of that, but it would be at least some relief to us if you say there must be a re-valuation. We would be standing at least somwhere near on a level with the State. We have, say, 500 feet back to the road and 900 feet from the shore out to the bulkhead. So far as we are concerned, when that is in use it will be a unit. The State, of course, at the end of the lease cannot take away what we now own, which is the upland, but it could cut our enterprise in two, and to that extent we are at a disadvantage; we have built up an enterprise, and if we go back, simply retire to our upland and say to the State, "There are the lands under water with our improvements, pay us what they are worth."

SENATOR WAKELEE.—To carry out that idea, take the plant of the Valvoline Oil Company on the Hudson river. About half is on the State's land and half on the upland. Suppose it were divided, what would the part remaining on the upland amount to?

MR. SEYMOUR.—Nothing, practically; I see so many difficulties in the way of re-valuing them, that it does not seem to me that

it is practicable to either re-value our property or say that the State can take it, or to put the State and the individual on a level so that they treat with one another. If you have our improvements there and you put a rental value upon the whole and say we must pay it, then we are paying a rental on what we put there, which is not fair. If you will value simply the lands of the State in the condition in which they would be if we had not put our improvements there, then we still are at a disadvantage unless you say you will pay us for our improvements in case we cannot agree upon a new lease and that does not seem to be practicable ; and if you lease it to somebody else you would put a still higher valuation on it because you lease not only your own lands but ours with it.

It is a very difficult situation to deal with when it comes to the end of the lease. It seems almost impracticable to me, and that the only way out of it certainly in a case of this sort, which contemplates a large enterprise, both upon the upland, and the same unit extending out over the water, is that there should be a grant and that it should be settled once for all at some price, so that the thing may be accomplished.

SENATOR MINTURN.—Is there not an element of franchise, the right to own water front? You say there is nothing akin to a limited franchise in it.

MR. SEYMOUR.—I didn't mean to say that possibly there might not be some idea of a franchise, yet I found it hard to state what it was. A franchise, as I understand it, is a privilege to make use of some public utility, some public privilege. I can't conceive that we haven't the right now to go down and jump into the water and swim around. We have got some rights to the water; the water comes right up to our shore, whether that is a franchise or what it is ; at all events the State of New Jersey has so cut it down by its policy that its courts recently have found it very difficult to find any right that we have there beyond the right that anybody else has.

SENATOR MINTURN.—Under the decisions of the Court, the public has the right to use that land in front of your land. It is a public highway. The State grants that to you. That immediately gives you the right to exclude the public from that land ; what is that but a franchise ?

MR. SEYMOUR.—The only thing with respect to that is this: In reality what the State gives to us is not part of the public highway when you strip it right down, because both the Federal Government and the State say that we must not build out into the highway so as to obstruct navigation, and they have located a pier line

and a bulkhead line, and located them way back from the channel. The land under water in front of our property for seven or eight hundred feet, nearly out to the bulkhead, comes right out of the water at low tide, so that the land that the State would grant to us is not in its essence, and as a physical fact a public highway. Nobody can walk over it, nobody can sail a boat over it of any size; you can row a small boat over it at high tide, but at low tide you can't get over it at all. So when you get to the physical thing that you are giving us, you are not giving us a right of going and coming, you are giving us something which everybody says is land, but in its present condition is worthless; it cannot be used either as land or as water, but with expense, with capital and enterprise, you can convert that which is neither land nor water into land, so that you can get out somewhere near the public highway which is the channel of the river.

McDOUGALL HAWKES.—Mr. Chairman, may it please the Committee, having given to this subject a great deal of thought I may be perhaps pardoned for speaking again before this Committee. The question of a possible element of franchise in regard to the granting of land under water by your State seems evidently to some people to be one of great importance in this investigation. Now, there is no element whatever of franchise in the granting of land under water by the State, for improvement for manufacturing for example, quite the contrary. A franchise of the character referred to is a grant by the governmental power of a right to the exclusive use of a portion of the highway to a body organized for commercial profit. In its last analysis that is what is meant in the public mind by the word franchise. If you apply that to any of the well known franchises you see that it coincides with that idea. A street car company wishes permission to lay its rails in the streets; it gets an exclusive right for the purpose of allowing cars on which fares are collected to go along a portion of the public highway, that is on property which belongs to the public, not for the purpose of mere ownership but for the purpose of being used by the public.

Now apply that to the water front, and you will find that the situation here is this: The State has no right under any circumstances—and if any State now undertakes to do it the Federal Government steps in—to make an exclusive grant of the use of any portion of the land under water in the channel, namely, the highway, that is to say, that portion of the river which lies beyond the pier head line.

Questions have frequently arisen in Europe in regard to the grant-

ing of land under water, and it has been held in the case of tow lines on the river, where it has been customary to grant to a company —and I am not sure but what it has been done formerly, under certain conditions, in this country—to grant to a towing company a right to lay a chain in the river, that in that case the State should not grant a perpetual right to lay that chain, but a limited right. That is to say, a lease to lay that chain, which may be renewed after a certain period. Do not get the idea that the granting of land under water is a franchise. On the contrary, the common law gave to the owner of the ripa, that is to say, to the man that owned the land up to high water mark, a right of access to his property from the highway, the channel, and the State has no right to take that right of access away from him without compensating him for it.

SENATOR MINTURN.—It has been held in this State that he did not have such a right. The United States Supreme Court held that the State has a right in fee to the land between high and low water, which would preclude the idea that the owner of the upland has a right to use this land as a means of ingress and egress.

MR. HAWKES.—The character of the title of the State to the land between high and low water mark comes down to the question of the ownership which the colony had in that land. The right of access to the ripa by the owner of the ripa, I was not aware that it had been questioned anywhere. It certainly has not in the State of New York, and so true is that that in the city of New York where the city undertook a few years ago to build bulkheads in front of the line of high water which was owned by the riparian proprietors, and undertook to do it without any compensation to the owner, the Court of Appeals stepped in in the famous case of Langdon vs. The Mayor, and said they should not do it until they made compensation.

No more has the city a right to put in the street an obstruction which prevents the owner of a building adjoining from reaching his building. That has been carried to extreme limits in New York, where the right was granted to the elevated railway to put posts in the street, which posts and their superstructure obstructed the access to property to the extent at least of obstructing a man's air and light, and it was held that the grant carried with it the right of compensation to the property owner.

SENATOR MINTURN.—This whole subject of grants which has been followed since the sixties is based upon the theory that the State is the absolute owner of the riparian lands and has a right to dispose of them in any way the Legislature thinks fit. It is re-

stricted now to the school fund, so that the argument you are now making in that regard, does not prevail in this State.

MR. HAWKES.—I have examined the cases in this State and I didn't find anything contrary to the veiw I am trying to bring out. The question of the character of the ownership of the State in land under water must, as a finality, depend upon the ownership that the colony had in that land, because that title came from the crown in the first instance, and it was held in England that the crown had a limited ownership, namely, a right which was subject to the rights of the man who owned the ripa, and that is the law in New York State today.

SENATOR MINTURN.—As I understand, the king held the right to these lands in trust for the people, and when this colony became independent, it succeeded to the right of the king.

MR. HAWKES.—The English courts have always held that the king could not obstruct the right of the ripa owner to land merchandise at his high water line. That has been the universal law as laid down by the English courts. I read the cases you refer to, but I don't recall that there is anything contrary to the point I am making.

SENATOR MINTURN.—I mention it because your argument would lead to this conclusion : that the Riparian Commissioners as they now exist have no right whatever to grant these lands, that the lands belong to the owner of the ripa.

MR. HAWKES.—No; I don't say that; no, not at all. What I say is, that these lands belong to the State in trust for the people of the States, and that these lands are subject to the easement of the riparian owner to get to his property over them so long as the bed of the river does not change without artificial causes. The State has got a perfect right to grant to the owner of the ripa the balance of the estate which the State itself holds, and then, of course, the easement merges in the greater estate.

SENATOR MINTURN.—Under our riparian act it provides that the State shall sell to the riparian owner ; he has a right preempted for six months. If at the end of the six months he declines to accept the grant, the State may sell to a third party. What is the position under your view of the third party who buys, can he not exclude anybody else?

MR. HAWKES.—It is perfectly clear what his position is so long as he does not undertake to improve the land in such a way that prevents the ripa owner from reaching his land ; but the moment he undertakes to put a stone wall or a pier in there which prevents the owner from getting to his ripa, then he is taking away the

common law right of the owner, and this calls for compensation, any statute of the State of New Jersey to the contrary notwithstanding. If that point is properly brought up, it will not be allowed to stand, in my opinion. I have examined the statute of New Jersey upon that point, and if it permits possession by a third party, without compensation to the ripa owner, I don't believe it is constitutional. It must provide compensation to the owner when the State steps in to take away his right of access; this is what is known as the right of pre-emption, well recognized in the New York statutes.

SENATOR MINTURN.—That was always my theory, but I have stated what our courts have decided.

MR. HAWKES.—I should not accept any such decision, if that has been the decision, because it has been before the New York State courts and has always been decided along the lines which I have stated.

I think the great point to bear in mind is this point about mixing up the channel, which is a thoroughfare, with the land under water not in, but bordering on the channel. It is quite true that the State does own that land under water; it owns it for various reasons, but it owns it subject to the riparian proprietor's easement, and I consider has the right to grant it away subject to the easement.

Now, I think if Governor Stokes had been here when these gentlemen spoke who have given concrete instances in regard to riparian grants, when they placed their cases before the Committee, the Governor would have felt that so far as the commercial development of the State is concerned, it is inevitably linked with the question of an absolute grant of land under water by the State, unless the State is prepared to pay back to the lessee at the time of the expiration of the lease, the value of his improvements, in which case you place the granting of land under water in the nature of a lease, and in some respects precisely in the same position with such a leasehold as Trinity church gives today; land is granted to parties who want to improve the property on a lease of sixty or ninety years; the lease provides that at the termination of those ninety years, if Trinity church and the owners cannot agree upon the terms upon which the lease is to be renewed, then Trinity church will pay to the owner of the leasehold the value of the improvements standing upon that property. There are certain reasons which make it very much more difficult to ascertain what the improvements to the land under water are worth than in the case of improvements to street property, and Mr. Seymour has very properly brought out some of the difficulties that would arise.

Land under water must be differentiated from ordinary street property. Take the case of the Trinity church leaseholds for example, where a person has gone in and built an office building, that office building can be used for fifteen or twenty different kinds of commerce or business, but where you take a water front it has got to be improved with a certain and definite object in view, and an improvement which will be the very best for one is absolutely useless for another. If you want to use it for a ferry slip you have got to make an improvement of one kind, if you want to use it for a trans-Atlantic steamship company another kind, and if you want to use it for steam barges, another kind. You can't take these water front improvements as you take a house in a city and adapt them first for one purpose and then for another, and that makes it additionally difficult to re-value it.

GOVERNOR STOKES.—I don't know how the question arose as to the analogy between limited franchises and a lease. I don't think that is germain at all. I thought what you were considering was a fair adjustment of the valuation at the end of the leased period. If at the end of the twenty years there could be a fair adjustment as to the property of the trolley company so that they could sell to somebody, or continue, I don't know why an adjustment of rental values is not just as practicable on a lease of riparian grants. I don't think Mr. Van Duyne got the point of my question at all. If it is practicable for capital to invest in public utilities, on the basis of a limited franchise, it is only practicable upon the theory that at the end of that period that capital can be protected. If that is so, there is no reason why, at the end of a lease period, the capital in a riparian grant cannot be protected.

Now, so far as to the investment in bonds on a limited lease period, that is a rather difficult question to answer, because banks as a rule, that is, National banks, don't invest in real estate entirely, but we do buy gas bonds issued on a limited franchise for a certain period. Now, if banks can invest in those securities, and the franchise should expire within twenty, twenty-five or thirty-five years, I don't know why capital would not invest in a bond and mortgage on property that has a leasehold for twenty or twenty-five or thirty years. I can't see why, if you can work out one scheme properly, you can't work out the other. It is merely a question of adjustment at the end of the period. If that is practical then you can lease, if it is not practical, then you can't.

MR. SEYMOUR.—There would be no renewal because there would be no starting point.

GOVERNOR STOKES.—You are in a better position as lessee of a riparian grant than you are if your money is invested in a gas company. At the end of twenty years you have your money tied up in a gas company or in a trolley, and somebody else can come in and run it and manage it. If you get a riparian lease at the end of twenty-five or thirty years, you own the ripa in fee. You have got that advantage over the man whose capital is invested in a trolley company, because the chances are that no one is coming in to bid against you for the land at the end of the period. It is only going to be a question of adjustment between you and the State; only in rare cases will a grant be so located that anybody can come in and have access to the ripa. You have every advantage in the world to make fair terms.

MR. SEYMOUR.—What about the adjoining owners; they could come in and take it if they wanted to freeze you out. I brought a million dollars worth of factories into this State, and I could not bring another one.

SENATOR MINTURN.—I know of mortgages on leaseholds in New York.

MR. SEYMOUR.—Such as Trinity church and the Columbia college; then as Mr. Hawkes said, they take up your improvements and pay for them, in every case, that is the English law.

GOVERNOR STOKES.—You would have to have an absolutely fair adjustment in this case, otherwise it would be confiscation.

MR. SEYMOUR.—If the State decides to raise it beyond the fair price you will have to lose what you have in it, and you never could start in another place on those terms.

GOVERNOR STOKES.—You are assuming that the State is going to be manifestly unfair; and you are assuming that the provisions for arbitration will be manifestly unfair. In the first place, I don't think the State would be unfair, and in the next place, a scheme for arbitration could be devised to secure your rights.

MR. SEYMOUR.—I tried for eighteen months, and I have talked to, I think, 500 factory owners—that is my business, trying to induce them to come over to the place. I have landed others in there, but nobody would come on a lease, the cost of improvements is too great. It will cost us over $300,000 to improve our property over and above our original cost of the upland. Nobody could use it except the neighbors. I have got powerful neighbors on both sides of me, the Consolidated Gas Company on one side and the railroad on the other, and the railroad could not have it at any price, nor the Consolidated Gas Company, because we have our own particular purpose for it. But on a lease with its renewals, where would we

be? They would outbid us. How would you arrive at a fair valution? The Consolidated Gas would say: I will give you five hundred dollars, and the Erie road would say, I will give you a thousand dollars. Between the two I would be pinched; I could not do anything. As far as I am concerned, I am done. I will move all my enterprise and energy to another State where I can get more justice than I can in this State, provided you don't give me a grant. I can't operate on anything else.

SENATOR WAKELEE.—I want to point out on the line of the Governor's suggestion, that the bill introduced last winter didn't provide for any adjustment at the end of the lease period.

I want to ask the Riparian Commissioners if the State of New Jersey has ever, to their knowledge, made a grant or lease to a party other than the owner of the ripa?

MR. CLOKE.—I don't think there is a single instance of that kind on record, for the simple reason that he would have no access from the land to his acquired interest. He must own the ripa or he cannot get his land under water.

MR. SEYMOUR.—Suppose he adjoins him on the north?

MR. CLOKE.—Yes; then he could.

MR. VAN DUYNE.—The State of New Jersey gave a riparian grant to the Erie road to locate its line between high and low water in front of the ripa, and they drove their spiles and started their road. The owner of the ripa filled right out to them, and the railroad, before it got through, after the termination of some very warm suits, paid a big price for that right of way. That was some thirty-five or thirty years ago.

SENATOR WAKELEE.—Is there anybody else desirous to be heard? We have had numerous hearings and given notice of this meeting through the newspapers of the State, in order to enable everybody to be present. The Committee also specially invited everybody interested on this subject to be here, and unless some good reason is shown, this probably will be the last public opportunity to be heard. Is there anybody else desirous to be heard before we adjourn?

There being no response, the Committee adjourned subject to the call of the Chair.

STATE HOUSE.

Trenton, N. J., January 14, 1907.

Meeting of Special Committee of the New Jersey Legislature to Investigate the Granting of Riparian Lands by the State, etc.

PRESENT:

SENATORS WAKELEE (chairman), MINTURN and AVIS, and ASSEMBLYMEN BARBER, HOLCOMB, JONES, REED and CROWTHER.

SENATOR WAKELEE.—I have received the following letter from Mr. Shamburg in connection with the grant of a railroad lease in front of his property.

Jersey City, January 12, 1907.

The Committee of the Legislature,
Investigating Riparian Matters.
HON. EDMUND W. WAKELEE, Chairman.

Gentlemen:

I respectfully call to the attention of your Committee the position of riparian owners who, like myself, have had for years, and still have, applications for grants of riparian rights pending before the Board of Riparian Commissioners.

In April, 1903, I purchased a tract of land fronting on the Hudson river at Bulls Ferry. I have a complete grant of forty feet of frontage where the old ferry dock was, and my purchase includes not only that dock, but about 860 feet frontage to the north thereof, and about 800 feet to the south thereof. I bought this property with a view to very large expenditures of money upon it, and the building of docks and wharves, the cutting out of the rock behind it, so as to give more space, and the general development of the property so as to make it valuable for mercantile purpose, whereas it is now useless and lying idle. At the time I purchased this property the Counsel to the then Riparian Board called my attention to numerous grants which had been made of properties on the Hudson river, varying from twenty-five to sixty dollars per front foot, stating to me that the cost of the riparian grant of the State for the land under water in front of my property would be about $80,000.00,

with a rebate of from ten to twenty dollars a front foot, in case improvements were made within a reasonable time, and I bought the land relying on that statement. I filed an application for a grant of the riparian rights on the whole frontage in October, 1903, which is still without action. In March, 1904, without notice to me, and without my knowledge, the Board of Riparian Commissioners made a grant, for practically nothing, to the New Jersey Shore Line railroad, of a strip about eighty feet wide along my entire frontage, thus cutting off my upland from the river, and rendering the development of my property very difficult, and greatly diminishing its value. I, therefore, appealed to the Courts questioning the legality of such an invasion of my property, and the litigation resulted in the absolute setting aside of the grant to the Railroad Company. (Shamberg v. Board of Riparian Commissioners, 72 N. J. L., p. 132.) The location made by the railroad in front of my property under tide water was also set aside in June, 1906, by the Court of Errors and Appeals. (Shamberg vs. N. J. Shore Line R. R. Co., 64 Atl., 114.) My application still remains unacted upon, and I am unable to develope my property. Pending the investigation set on foot by the Legislature through your Committee the present Riparian Commissioners have suspended action on my application.

I respectfully draw the attention of your Committee to the hardship of my case and of others similarly situated, who, having made large expenditures in the purchase of property, relying in good faith upon the riparian policy and law of the State in force at the time of purchase, and being desirous to spend more to make the property useful, are prevented from doing so, and find their legitimate business enterprises entirely blocked. If I am allowed to obtain a grant, at a reasonable price, and to improve this property, great additional taxable values will be added to the county, and property now completely idle and useless will be productive and afford employment to large numbers of men.

I respectfully urge that I, and others similarly situated, ought to receive reasonable consideration at the hands of the State and be allowed to obtain their grants, as other property owners did, at the prices prevailing at the time we made our application, and I suggest that the present Riparian Board be requested to take such action immediately.

During the agitation of this subject, many very extravagant notions have been advanced with respect to these riparian lands. They are indeed of small value, and practically useless without the expenditure of very great sums of money, and they only become

useful when such expenditures are made, and the property is brought into some useful industry. Then they are valuable and yield to the State large revenues in the way of taxes.

The State of New York has sometimes been cited as against the advisability of making grants and as an example for us to follow in New Jersey, but on investigation it has been shown that the practice there, on the contrary, has been to make grants for very small sums to those who will stipulate to improve the property, and the State and the city look to considerable of their revenue from the taxes derived by virtue of such improvements. In cases where the city of New York has acquired the property, it has been constrained to do so because the owners would not properly improve it, and the acquisitions by the city have been uniformly followed by vast expenditures of public money in building marginal streets, stone bulkheads and piers, and the deepening of the waterway, so that similar expenditures, which in this State are now being made by the shore owners, in New York are made out of the public tax levies.

Unless this State is to adopt the policy of improving the shore front by public taxation, as is done in New York, our situation will afford no parallel to that existing there. The city of New York has issued water front improvement bonds to the extent of about one hundred million dollars which remain unpaid, and some similar debts must be created in this State if the State is to undertake to improve those lands.

I have held my lands, representing a large investment of money, nearly four years, during which the property has been useless to me, causing a considerable financial loss ; and again I submit that in justice to me as a property owner, I should be given an opportunity to acquire the riparian rights at a fair price.

Yours very respectfully,

A. J. Shamberg.

Mr. Minturn moved that the Attorney-General be requested to furnish this Committee with an opinion as to the legal and constitutional power of the Riparian Commission, under the present acts of the Legislature, to make grants and leases of land.

Secondly. As to the power of the Legislature itself to grant and lease public lands under water.

Thirdly. As to the power of the Legislature to empower any board by legislative act, to make grants or leases of lands under water belonging to this State.

Fourth. Whether or not these lands owned by the State, under

water, are not to be held forever inviolate in trust for the people as a fund for the support of public education in this State.

Fifth. As to the right of the Riparian Commissioners to grant lands under water in the bays and tributaries of the bays in this State where the Oyster Commission has jurisdiction, under the various enactments of the Legislature of this State.

Sixth. The effect of any grant made by the Riparian Commissioners to the owners of uplands in the bays and in the tributaries of the bays in the oyster districts of this State, where the State has appropriated money for the seeding of these lands with oysters, and where the Oyster Commissioners under these laws have leased the lands to independent oystermen, under valid leases running for a year,during which the land was conveyed by the Riparian Commissioners.

Seventh. As to the effect of the grant made by the Riparian Commissioners of lands of the State in front of public streets and highways with or without notice to the municipalities interested.

Eighth. That he gave us an opinion under the present law of the right of the Riparian Commission to make the railroad licenses which were made to the Edgewater and Fort Lee railroad, the the Shore Line railroad and the Atlantic Highland Railroad Company.

The motion was seconded and carried.

It was moved and unanimously carried that the Committee request the Riparian Commissioners to furnish, for the purpose of aiding the Committee in its report, a statement showing the riparian lands granted and the remaining lands, it not being intended to require a list, but a comparative statement according to their records.

On motion unanimously carried, Senators Wakelee and Minturn were appointed a Committee to confer with Mr. McDougall Hawkes, of New York city and arrange to have him furnish to this Committee a brief setting forth the policy of the different states and such foreign countries as he may have knowledge of, without too extended research on the question of leasing and granting riparian lands.

The Committee then adjourned to meet on Monday evening, January 21, 1907, at the State house at Trenton.

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REPORT.

REPORT.

To the Senate and General Assembly of the State of New Jersey:

The Committee of the Legislature appointed by the President of the Senate and the Speaker of the House of Assembly, pursuant to the provisions of Joint Resolution No. 9, Laws of 1906, page 742, respectfully submits herewith its report.

The said Joint Resolution is as follows:

"JOINT RESOLUTION No. 9."

"Joint Resolution providing for the appointment of a committee of the Legislature to investigate the granting of riparian lands by the State, and report what changes, if any, should be made in the law in connection therewith.

BE IT RESOLVED *by the Senate and General Assembly of the State of New Jersey:*

1. That a committee of the Legislature, to consist of three Senators, to be appointed by the President, and five members of the General Assembly, to be appointed by the Speaker, be authorized and directed to investigate the entire subject of the granting by the State of leases and grants of riparian lands, what methods have been pursued in the past, what lands are now held by the State which may hereafter be the subject of riparian lease or grant, what lands have been heretofore granted by the State and under what condition, what methods have been used for the determination of values in fixing the rentals, and in general the whole subject of leases granted by the State of its riparian lands.

2. The said committee shall have the right to employ counsel, a stenographer and other clerical assistants as may be necessary, and, with the approval of the Governor, fix their compensation, which shall be paid by the Treasurer on the warrant of the Comptroller.

3. The said committee shall have the authority to sit after the final adjournment of the Legislature.

4. This resolution shall take effect immediately. Approved May 22, 1906."

The Committee held its first session in the Senate Chamber at Trenton, on July 11th, 1906, the entire Committee, consisting of Senators Wakelee, Avis and Minturn, and Assemblymen Crowther, Reed, Jones, Holcombe and Barber, was present.

Senator Edmund W. Wakelee was selected as Chairman, Assemblyman A. N. Barber was selected as Secretary, and the Attorney General, Robert H. McCarter, Esquire, was requested to serve as counsel. Mr. Frederick W. Gnichtel was appointed official stenographer, and John D. Lovett was appointed sergeant-at-arms.

The Riparian Commissioners and their Secretary and Engineer were requested to appear before the Committee and bring data and maps bearing on the subject of the Committee's investigation.

Many meetings were subsequently held by the Committee, at which were examined the Riparian Commissioners, their Secretary and Engineer, former members of the Board of Riparian Commissioners, the former Counsel of the Board, and a large number of witnesses.

A great quantity of testimony was taken and is herewith submitted in printed form for the consideration of the Legislature.

HISTORY OF STATE'S TITLE TO RIPARIAN LANDS.

The Committee deems it of interest in this connection to briefly refer to the source of the title of the State to its lands under water.

The common or popular idea formerly was that the owner of the abutting upland was also the owner of the land under water adjacent thereto, so far as not to interfere with navigation; and when the State, through its appointed agents, took absolute and notorious control of its lands under water from the line of mean high water out to such limits as were fixed for the improvement, by reclamation and construction of docks and wharves, there was much objection and some litigation on the part of owners of the water front lands to the assumption of title by the State.

The title of the State is founded in the ancient doctrine of the sovereignty of the King. The first diversion of the title of the King is that of the grant from Charles II to James, the Duke of York, March 12th, 1663. This grant covered much of the land

along the coast, from Maryland to Maine, and on June 24th, 1664, James, the Duke of York, sold to Berkeley and Cartaret that part of the grant from King Charles, of March 12th, 1663, now known as New Jersey, and in 1676, New Jersey was divided into East and West Jersey and held by what were known as the Lords Proprietors.

In the year 1702 these Proprietors surrendered to Queen Anne all the rights of Government held by them, reserving, however, the rights of property. The title to the soil of the tidal waters was not within the reservation, but again passed by the surrender of the Government of the proprietors to the Crown of England.

Thus the title to the lands under water, being vested in the King of Great Britain, at and before the Revolution of 1776, became vested, by the law of nations and the right of conquest, in the people of the then Colony, and now State, of New Jersey, by the successful War of Independence.

No general supervision or control seems to have been exercised by the State over its lands under water until 1851, when the Legislature passed what is known as the Wharf Act, entitled "An Act to authorize the owners of lands upon tide waters to build wharves in front of the same" (*P. L. 1851, p. 335*). The Legislature did, however, from time to time, by special acts, make grants of riparian lands to different persons.

The Wharf Act gave to the Freeholders of the various riparian counties the authority to license, under certain conditions, riparian owners to wharf out into the tidal waters of the State.

In 1864 (*P. L. 1864, p. 681*), the Legislature appointed a Commission to look into the subject of the riparian rights of the State, and in 1865 this Commission made a report. In 1869, (*P. L. 1869, p. 1017*), the act was passed creating the Riparian Commission and repealing the Wharf Act as to the Hudson River, New York Bay and Kill von Kull. In 1891 (*P. L. 1891, p. 216*), the Wharf Act was repealed as to the rest of the tidal waters of the State, and thereafter the Riparian Commission was the only source through which riparian grants were made.

Attention is here called to the fact, that until 1891 the Freeholders of the riparian counties of the State also had authority to grant licenses to build docks, excepting as to the Hudson River, New York Bay and Kill von Kull.

With this short historical review let us take up the subjects in the order named in the Joint Resolution:

1. "What methods have been pursued in the past:"

(*a*). The methods purued in the past have been conveyances by grants in fee to the riparian owner, or under consent by the riparian owner.

(*b*). Leases in perpetuity at a fixed principal sum, bearing interest at seven per cent. per annum, with provision, upon application by the leasee, for conversion into a grant in fee.

(*c*). Licenses upon terms and compensation fixed by the Commission and revocable at the pleasure of the Commission.

(*d*). Licenses to railroad corporations made under the Thirty-sixth Section of an Act of the Legislature entitled "An Act to authorize the formation of railroad corporations and regulate the same," approved April 2d, 1873 and the supplements thereto.

2. "What lands are now held by the State which may hereafter be the subject of riparian lease or grant:"

The following is a statement of the unsold lands of the State in its various riparian counties:

Bergen County.

Hudson River,	7¾	miles.
Rivers and Creeks,	22	miles.

Hudson County.

Hudson River, New York Bay, Kill von Kull,	1⅓	miles.
Newark Bay, Hackensack River, Creeks, etc.,	25	miles.

Essex County.

Newark Bay, Passaic River,	17.5	miles.

Union County.

Newark Bay, Arthur Kill,	3	miles.
Elizabeth River, Rahway River, Norses Creek,	20	miles.

Middlesex County.

Arthur Kill,	5½	miles.

Monmouth County.

Ocean, Bays, Rivers and Creeks,	about 60	miles.

Ocean County.

Bays, Rivers, Ocean and Creek,..... about 145 miles.

Burlington County.

Ocean, Rivers and Creek,..... about 130 miles.

Atlantic County.

Ocean, Bays and Rivers,.....145 miles.

Cape May County.

Ocean, Bays and Rivers,.....115 miles.

Cumberland County.

Bay, River and Creeks,.....115 miles.

Salem County.

Bay, River and Creeks,..... 85 miles.

Gloucester County.

Rivers and Creeks,..... 40 miles.

Camden County.

Rivers and Creeks,..... 4 miles.

Mercer County.

River and Creek,..... 8 miles.

It was estimated by the Engineer of the Commission that the above unsold lands are worth about $15,000,000.

The following is a supplemental statement of the unsold lands of the State, prepared and testified to as an active asset or lands that are likely to come into demand in the not distant future:

LANDS UNDER WATER ON THE HUDSON RIVER, OPPOSITE THE CITY OF NEW YORK.

About 1.8 miles, estimated value,..... $1,019,500.

These lands are available for enterprises of the highest commercial importance; they have railroad facilities and they are opposite the very valuable water front of the city of New York.

The railroad companies have their terminals along this front; large industries are established and in operation in the vicinity.

LANDS UNDER WATER IN NEW YORK BAY.

About one-half a mile of front, estimated value,.... $250,000.

These lands are available only after certain work, such as dredging channels, to bring them into communication with the deeper waters of New York Bay. The Pennsylvania Railroad Company, the Standard Oil Company and the National Storage Company have utilized them, and there is no question but that they are very valuable assets to the State.

KILL VON KULL (CONNECTING NEW YORK AND NEWARK BAY).

About one-half mile, estimated value,..... $125,000.

These lands are available for all kinds of manufacturing purposes and are utilized in part by such enterprises as the Babcock & Wilcox Co., the Guffey Petroleum Co., the Standard Oil Co., copper refineries and kindred industries.

NEWARK BAY, HACKENSACK AND PASSAIC RIVERS.

About 19.3 miles, estimated value,..... $929,000.

All of this water front is available for manufacturing purposes of all kinds where deep draught vessels are not used, and are very valuable for this purpose; and with the deepening of Newark Bay and the rivers, will become still more valuable.

STATEN ISLAND SOUND (CONNECTING NEWARK AND RARITAN BAYS).

About 6 miles, estimated value,..... $800,000.

This water front is very valuable and available for manufacturing purposes, for refineries and kindred industries, not permissable, perhaps, very near to closely built up sections. It is one of the most valuable sections of water front in the State.

RARITAN RIVER (NORTH AND SOUTH SIDES).

About 2½ miles, estimated value,..... $900,000.

Available for smelting works, brick manufactories and kindred industries not requiring vessels of great draught.

DELAWARE RIVER (AT CAMDEN).

About three miles, estimated value,..... $172,500.

This front is available for railroad termini, manufactories, refineries and kindred industries needing railroad as well as water communication.

The total value of this last class is estimated at $3,386,000.

3. "What lands have been heretofore granted by the State:"

The following is a statement made by the Engineer of the Commission, of the lands of the State heretofore granted:

Bergen County.

Hudson River, ... 5½ miles.
Rivers and Creeks,..... Very little sold.

Hudson County.

Hudson River, New York Bay, Kill von Kull,.... } 14 miles.
Newark Bay, Hackensack River, Creeks, &c.,..... }

Essex County.

Newark Bay, Passaic River,..... 3 miles.

Union County.

Newark Bay, Arthur Kill,..... 4¼ miles.
Elizabeth River, Rahway River, Norses Creek,..... Very Little.

Midlesex County.

Arthur Kill, ... 2¾ miles.
Bays, Rivers, and Creeks,..... Very little.

Monmouth County.

Ocean, Bays, Rivers and Creeks,..... 26 miles

Ocean County.

Bays, Rivers, Ocean and Creek,..... 11 miles.

Burlington County.

Ocean, Rivers and Creek,..... 8 miles.

Atlantic County.

Ocean, Bays and Rivers,..... 14 miles.

Cape May County.

Ocean, Bays and Rivers,..... 18 miles.

Cumberland County.

Bay, River and Creeks,..... 3¼ miles.

Salem County.

Bay, River and Creeks,..... ⅓ mile.

Gloucester County.

Rivers and Creek,..... 3 miles.

Camden County.

Rivers and Creeks,..... 5½ miles.

Mercer County.

River and Creek,..... ½ mile.

The sale of the above lands has brought into the State Treasury about $6,250,000.

These lands have been sold by the State, through the Riparian Commission, invariably to the shore owner, as the law prescribed, the law providing that the riparian owner should have the first right to acquire.

The conveyances were by grant in fee and perpetual lease, convertible into grant, as provided for in the act of 1869 and its supplements.

4. "What methods have been used for the determination of the values in fixing the rentals:"

The testimony of the present Chairman of the Commission on the above question is as follows:

> "If we are unfamiliar with the matter, and it is a matter of importance—generally we are pretty familiar with the entire situation, but if it is a matter of considerable importance we go and look at it, send the Engineer, or the Committee goes and investigates the matter, but generally we are pretty familiar with the physical situation of all our tidal waters, especially those which we call active riparian properties; that is to say, where they are in demand and nearby. Then we consult among ourselves as to the value. We generally ask the applicant what is his view about it. We arrive, after consultation among ourselves as to the situation there, its convenience to ports, the character of the water, as to whether it is navigable, and a number of factors entering into it—at a conclusion. We fix the value, if it is a grant, at so much a running foot front. If it is a lease, we fix it in the same way."

And still further on this subject, the Chairman testified as follows:

> "I say as a matter of strict construction I should say that we are not in a position to make any concession to anybody for any purpose; yet at the same time, we have discretion, there is discretion lodged in us, and we are supposed to have common sense and bring it to bear upon these problems; and when a public corporation applies for property for public purposes and not as a means of gain, it seems to me reasonable that we should at least give them the benefit of whatever doubt that we have. And so if a large corporation wants to come to

New Jersey, hesitating whether it should come to New Jersey or go to Staten Island or go to Connecticut, and if they are going to locate a plant in this State that will give employment to many men and increase our taxable property enormously, we give them consideration."

Your Committee has no reason to doubt that the foregoing extracts from the testimony of the Chairman of the present Commission do not correctly describe the practice that now and for some years has prevailed in the board; but, as will appear as we progress in this report, the evidence discloses that a sadly different practice has prevailed in arriving at the price; that, for example, grants were frequently made on the most valuable part of the Hudson River front, at prices very much lower than were received for grants on the same river, considerably further up and much less valuable. No adequate explanation seems to have been offered for these varying prices. Prices were made, for instance, at $75 per foot, and some years after, further down the river, much more valuable water front as to location and general situation, was granted at $40 a foot—and this not in isolated cases—and it seems that for ten or fifteen years no logical rule was followed, but the fixing of prices seems to have been a haphazard operation, and the only explanation brought out in the testimony will be referred to hereafter, and seems not (to say the least) to reflect credit on the judgment or management of the Commission's affairs.

The same state of affairs is true of Staten Island Sound, of Raritan Bay, of the Shrewsbury River, and notably true of the Delaware River at Camden, where grants were made years ago at $3.50 a foot, subsequently more valuable front was disposed of at $2 a foot; then at $3 a foot, and then again at $2 a foot; and the present board is now asking and receiving for these same lands $10 a foot.

5. "In general the whole subject of leases granted by the State of its riparian lands."

From the testimony it would appear that, originally, the doctrine of the State's ownership of its lands under water, not being well established and the commercial development of the water front being in its infancy, the question was treated liberally and with an evident desire to foster and encourage industries.

It was not questioned but that, had those originally entrusted with the administration of the riparian interests of the State, foreseen the enormous developement and value of these lands

that were to come, they would have felt justified in securing to the State some interest or share in this great prospective value. As it was, the greater and more valuable part of the riparian rights of the State have been disposed of under these liberal terms and irrevocably diverted from the school fund.

Coming down to more recent years—say within the last ten or fifteen years—it would seem that this idea of encouraging industries has been carried to such a degree as almost to lose sight of the fact that these rights were the property of the State, for which adequate compensation should be secured, and the testimony developed a state of affairs in the administration of the riparian interests, if not criminal in its character, certainly less mindful of the interests of the State than of the individuals concerned.

For example, it was developed in this investigation that, in the Hudson River, the most valuable water front of the State, grants were made at varying prices, for which no adequate explanation was offered, and at prices that were not more than a quarter as high as those now readily paid by applicants; and it further appeared that, in several cases, a member of the then existing Riparian Commission was personally interested in these properties or the acquisition of the grants.

It appears that in one case in which the then chairman of the board, or his firm, was interested, the Riparian Commission was led to believe that the location of an enterprise was dependent upon the granting of a certain piece of water front at a very low rate, whereas the fact was that the locating company already owned four-fifths of all the upland rights required, and had already determined to locate there, so that there was no necessity for the State's disposing of this water front for the purposes stated. All this fully appears in the evidence and on the map printed on page 419 of the testimony.

The fact that the present Commissioners are asking and receiving prices three or four times higher than those at which grants were made up to three or four years ago, points rather to a reprehensible administration than to any defect in the principle of disposing of the State's lands, for it has been the practically unanimous view of those who appeared before this Committee, representing all interests, that the conveyances in the form in which they are now made were not only the most attractive, but were, in fact, the only form of conveyances that would have been accepted and paid for by them.

A flagrant illustration of this maladministration was the granting of a considerable tract of valuable land under water on the Hudson River for a nominal consideration to one Goetchius, under the claim of an ancient legislative grant. This was done under the advice of the then counsel of the board, notwithstanding the Fourth Section of the Act of 1869, which provides:

> "That in case any person or corporation who, by a legislative act, is a grantee, etc., shall desire a paper, capable of being acknowledged and recorded, made by and in the name of the State of New Jersey, etc., that the Riparian Commissioners may execute such a paper upon receiving the compensation of fifty dollars per foot for the land included within the grant."

The explanation of the then counsel for the Riparian Commission and of the then chairman of the board, both of whom were examined as to this transaction, was that they believed that this Fourth Section of the Act of 1869 had been repealed; but it appears that a short time prior to the time of advising the board to make this grant for a nominal consideration, the same counsel of the board had written an opinion, concurred in by Attorney-General Grey, that the Fourth Section of the Act of 1869 was in force.

The facts attending this so-called Goetchius grant are so remarkable that your committee deems it of importance that their history should be adverted to:

On or about the 18th day of April, 1874, two leases were made by the Commission to the heirs of Robert Annett. Upon these leases rent was paid up to October 18th, 1875, at which time payment ceased.

On November 13th, 1890, George L. Record, Esquire, on behalf of one of the Annett heirs, presented to the board an application for the conversion of a part of these Annett leases, in the Hudson River at Fort Lee, into a grant, which application, after being referred to the Chairman and Engineer of the board and the Attorney-General, was, on November 28th, 1890, declined.

On March 28th, 1895, the Secretary of the Board presented a list to the board from the State Treasurer, showing the rentals due on a number of leases, and the minutes disclose that this list was referred to the General Counsel, who was Mr. Record.

One of the largest arrearages, if not the largest, contained in this list, was that due on the Annett leases.

The testimony further discloses a correspondence between Mr. Record, and Attorney-General Stockton, in which the latter gave the former the right to use his name in any proceedings to recover this rent, and, under date of July 25th, 1895, the Attorney-General, in reply to a request from Mr. Record for compensation for his services in connection with his attempt to collect these arrearages, says:

> "When some important result is reached, such as cancelling of the Brownwell leases or the settling of the Annett matter, it will be easier, of course, to get you a proper compensation than in the ordinary routine of matters.

It thus plainly appears that Mr. Record was engaged in endeavoring to collect the rents due the State from the Annett Heirs, which at that time amounted to $31,590, and was claiming compensation for his efforts in that direction. It further appears that an information had been filed in the Court of Chancery by Attorney-General Stockton against the Annett Heirs, including one Hannah Hawes, seeking to set aside these leases upon the ground of the failure of the tenants to pay any of the rent for a period of more than sixteen years. Mr. Record, on behalf of some of the Annett Heirs, including Mrs. Hawes, moved to dismiss this information on the ground that the Court of Chancery had no jurisdiction, and his brief upon that motion is printed in full on page 614 of the testimony. The brief ends with the following summary:

> "The case in a nutshell is this. The State has made leases to the Annetts on annual rentals secured by the right of re-entry, distress and forfeiture. For 17 years it has allowed the Annetts to default in payment of the rentals and now seeks to collect the rentals and forfeit the leases by decree of Chancery.
>
> "The State can maintain ejectment at any time. The right of entry is perfectly valid and at all times available. There is no fraud, actual or constructive, in the case. The leases were a prudent exercise of the discretion vested in the Riparian Commissioners, and the State's only trouble is in the neglect of its appropriate officers to enforce the payments of the rents by distress or ejectment. The school fund has nothing to do with the case. The demand for the rents and the forfeiture of the lease is inequitable and multifarious. There is, therefore, no equity in the bill.

This case was argued before, but never decided by, the late Chancellor McGill.

This was the situation in 1901. In that year correspondence was opened with the Riparian Commission by Senator William M. Johnson, then Assistant Postmaster-General of the United States, on behalf of John M. Goetchius, desiring a grant from the State of a portion of the same property included in the Annett Leases. To this application a reply was sent by Mr. Record, in which he says:

> "The land involved in your client's application is about two acres, which, at the rate mentioned, waiving the charges per foot, would call for the payment of $1500."

Mr. Johnson then withdrew, and the Goetchius application was thereafter handled by other counsel, whereupon a written opinion was given to the board by Mr. Record, concerning this application, in which he advises that the rights of the State, if any, to these lands under water are practically without value, and in which he identified the property in question as lying "in front of lands owned by the said Goetchius, which are commonly known as the 'Annett Property'," and says:

> "Prior to 1844, Robert Annett, the then owner of the upland, had constructed two wharves upon the land under water included within the application of Goetchius. These wharves were constructed without any license or authority from the State. In 1844 an act of the legislature was passed, a copy of which is hereto annexed."

The opinion then continues:

> "Under these circumstances, the rights of the State, if any, to the land under water, are practically without value. In one or two instances, under somewhat similar circumstances, as for example, in the Donohoe grant, it has been the practice of the board to make a grant, for a nominal consideration, and I am of the opinion that such a course should be followed in this instance."

It should, perhaps, be noted in passing, that the Donohoe grant, referred to in the opinion, was made because of a legislative grant to Ingham and Jenkins, under which, in the case of the Guffey Petroleum Company, the State has received the sum of $27,000 for a grant such as was desired by Goetchius, after some pro-

tracted litigation in the Court of Chancery; so that the Donohoe grant really constitutes no precedent for the advice in the opinion.

The grant was made pursuant to this advice, for a nominal consideration, not alone of the two acres referred to by Mr. Record in his letter above mentioned to Senator Johnson wherein he valued them at at least $1500, but of a tract of land under water, comprising 2,646 feet front, and containing about 60 acres of land under water, and valued, at the rates quoted in the above letter of Mr. Record, at over $150,000.00.

The result of this was, that the State, which, by the terms of the grant, quit-claimed all of its interest in this property, undertook to dispose of its interest therein for a mere song, and it is claimed by the grantees, also lost its right to collect the arrearages of rentals, amounting as before stated to the sum of $31,590.

The position of Mr. Record upon this whole subject is, as it seems to your Committee, altogether inexplicable; particularly in view of the further fact brought out in the evidence that, on April 7th, 1899, on the application of the Hoboken Land and Improvement Company for a grant capable of being acknowledged, pursuant to the Fourth Section of the Act of 1869, of lands under water on the Hudson river—they also claiming under a special legislative grant—he had, as we have already seen, given a written opinion to the Commission, concurred in by Attorney-General Grey, advising the board to grant the application at the rate of fifty dollars per foot.

The gentlemen who were members of the Riparian Commission at the time of this occurrence, who were examined, expressed entire ignorance of this situation, and excused their action in making this grant for a nominal consideration by the fact that they relied upon the counsel of the board.

Your Committee cannot but conclude that the Riparian Board in this transaction were so negligent of the interests of the State as to merit severe condemnation. It would seem to your Committee that the slightest investigation on the part of the members of the board would have recalled to their recollection the true situation of affairs, and that they had no right to rely supinely upon the legal opinion of their counsel, and overlook facts that they should have remembered or called to mind, and thereby have more diligently safeguarded the interests of the State.

It may be added that the present Riparian Commission has placed in motion the machinery of the law to test the legality of this conveyance, and, if possible, to secure the return to the State of this most valuable property.

This and similar cases point to a reprehensible administration of the office of the Riparian Commission rather than to any defect in the laws governing the same. For, if the law had been carried out in this case the applicant would have been obliged to pay the prescribed price of $50 a foot before receiving this executed paper, capable of being acknowledged and recorded, or he could not have received the grant.

RAILROAD LICENSES.

The question of licenses issued to railroad companies under the Thirty-sixth section of the General Railroad Act, occupied a considerable part of the attention of the Committee.

It was developed that a license was issued to the Navesink Railroad Company in 1891 to construct a railroad along the shore of Raritan Bay, for a distance of nearly a mile, the right of way of which railroad lay partly within and partly above the waters of said bay.

The circumstances attending the granting of this license, as shown by the testimony, were of such a character as to give rise to grave suspicion that the action of that particular board was improperly influenced in the matter. It was during the hearing, brought out by a witness, who was at the time of the giving of the license one of the attorneys of the board, and afterward became the General Counsel of the board, that he was employed by the railroad company to put the matter through. It further appeared that this same attorney employed the son and private Secretary of the then Governor to pose as counsel for the railroad company, although the latter seems never to have appeared before the Commission, his name being signed to the papers by this same attorney. The license was executed at a meeting of the Riparian Commission held at half-past 9 o'clock on a morning, and less than forty-eight hours after notice had been mailed to some shore owners, while the law required six months' notice. It further appeared that no opinion of the then Attorney-General is on file, or no written opinion was ever given approving such a construction of the general railroad law as would warrant the granting of a license along the edge of a bay or river under the idea that it was a "crossing;" but on the contrary, there is an opinion from this same attorney, who had in the meantime become General Counsel of the Board, concurred in by the Attorney-General, in a case of

some two years later, against such a construction, in which he says:

> "The provision of the statute is confined entirely to crossing the lands of the State and provides minutely for draws, lights and other means to facilitate and protect navigation."

The action of the former Riparian Commission in 1891 in granting this license, without reference to the Attorney General, was followed in 1902 by a similar action in granting a license under similar circumstances, along the shore of the Hudson River, with the concurrence of the same General Counsel, notwithstanding his opinion in 1893, above quoted, and that without notice to the shore owners.

This railroad license was made to the Edgewater and Fort Lee Railroad Company in May, 1902,—a railroad projected to run along the shore of the Hudson River to Fort Lee, and to make accessible to railroads the vast amount of territory in that vicinity.

This company desired the right or license to lay its tracks along the lands of the State for a distance of a mile and a half, and upon the presentation of its application it appears that several property owners along the river appeared before the Commission and drew its attention to the fact that this railroad, if built, would not only enhance the value of their property, but the riparian lands still belonging to the State, at present inaccessible to railroads, would thereby be also enhanced in value.

The result was that a license was made to this company for the sum of $1500, being exactly the amount it offered, provided the railroad was completed within two years. At the expiration of that time the company again appeared before the Commission and showed that, owing to delay in securing its right of way over the property of private owners, by reason of protracted condemnation proceedings, it had been unable to complete its road within the required time, and sought a further extension. This was granted.

At the end of this extended period another application was made to the Commission, for similar reasons, but the same was not granted, the whole matter being referred to the Attorney-General, the subject having become, in the meantime, involved, in view of the decision of the Supreme Court in the case of the New Jersey Shore Line Railroad Company hereinafter mentioned.

It is apparent that the action of the Commission in making this license, without notice to the shore owners, was improper, and it

also is very questionable whether its action in readily accepting the sum offered by the Railroad Company, without endeavoring to get more for the school fund on the theory of the future benefit that would come to its other lands, was justifiable.

Another instance of licenses of this character and under similar circumstances was the granting of a license to the New Jersey Shore Line Railroad Company in March, 1904. This license was to construct a railroad along the shore of the Hudson River, and was also made with the concurrence of the same general counsel, and without notice to shore owners. It has since been declared void by the court. See *Shamberg* v. *Riparian Commissioners, 43 Vr. 132.*

Another incident brought out in the testimony was the making of a grant of several thousand feet of valuable water front on the Shrewsbury River at the rate of seventeen cents a foot, while on precisely the same water front, and with the same character of lands, grants had been previously made at $2 a foot. There does not seem to have been any adequate explanation for this, unless it be that offered by a former member of the Commission, who testified (page 468):

> "The reason he suggested was that if at the end of the year the board made its annual report to the Legislature without showing any receipts, the Legislature might feel that the usefulness of the board had ended, and himself and myself, and, I suppose, all the other members might lose their little stipend of fifteen hundred dollars a year."

FEES.

A matter developing in the investigation, which occupied some attention, was the question of the collection of certain fees by the counsel of the board, said to be for the examination of abstracts furnished by the applicants, for the furnishing of a certificate of such examination by the counsel of the board, and the preparation of papers. These fees were divided between the counsel and the secretary of the board. The explanation of the secretary was he had prepared the grants, leases, maps, etc., and under the provision in the Act of March 27th, 1874, page 103, to the effect that "all such conveyances or leases shall be prepared by the said Commissioners or their agents, at the cost and expense of the grantee or lessee therein," that he had personally prepared these

papers and accepted a division of the fees, and also that he had applied the same to the payment of the office expenses of the Commission, as no provision had been made by the Riparian Commission for the employment of clerks and the payment of the other necessary work of the Commission. The attorney of the board, who was also under salary, claimed a right to collect these fees for services in examining the titles of the applicants; but the fact remains that out of a total of 342 cases, in which the counsel of the board charged fees for "examination of abstracts, furnishing certificates, and preparing papers," he furnished only fourteen certificates, and of the remaining 328 cases for which he charged a fee for "examining abstracts," in at least 174 cases no abstracts were ever furnished.

The amount of these fees aggregated the sum of $7,000 thus received and divided, and covered a period of above seven years.

GRANTS AFFECTING MUNICIPALITIES.

It developed in the investigation that in former years, and up to a recent period, it had been the practice of the Riparian Commission to grant to individuals the lands under water at the ends of the streets in our municipalities, and while it is in evidence that in recent years the Commission has not followed this practice, it is recommended and urged that hereafter in every application the proper officers of the municipality in which the lands are situated be given ample notice of such application, and of the time and place for the hearing and consideration of the same, so that the municipality may be in position to assert its rights, if any, and have them conserved.

COLLECTION OF RENTALS.

One of the questions arising in this investigation was as to the collection of rentals due on riparian leases and the arrearages of the same.

Considerable attention was devoted by your Committee to an investigation of the reasons why so large an arrearage of rentals has been permitted to remain, and your Committee feel satisfied that this has been largely, if not altogether, due to technicalities existing in the law, by which, according to Attorneys-General

Stockton and Grey, there was no way in which the payment of the moneys due for back rentals could be enforced.

With this defect in mind, a remedial act was prepared and introduced into the Legislature in 1905, but failed of passage. A somewhat similar act, however, was passed in 1906, and under its provisions the riparian board is at present successfully engaged in collecting large amounts of these arrearages.

IN GENERAL.

The Committee believes the evidence shows a lax, and, to say the least, questionable administration of the riparian interests of the State, both as to policy and practice. Your Committee believes that, for the last fifteen or twenty years, the character and value of the State's holdings on its commercial waters is so fixed and established that no such inadequate prices as were fixed by the former Commission for the valuable lands on the Hudson River, Staten Island Sound and Delaware River were needed to induce purchasers to locate in the State of New Jersey; and your Committee points for corroboration of this opinion to the fact that the present Commissioners are asking and receiving prices three and four times in excess of those at which grants were made by the preceding commission, and the State has, in our judgment, been deprived of hundreds of thousands of dollars in this way.

Your Committee is impressed by the fact that, situated as the water front of the State of New Jersey is, it is in a distinctly different class from that of the city of New York, and a development and supervision possible in the city of New York is not practicable in the State of New Jersey. The City of New York has a public street running around almost its entire water front, giving uninterrupted access to its water, and making it possible for the municipality to improve the water front and dispose of it by sale or lease without consulting any other interest.

This is not so in the State of New Jersey. The water front is geographically and physically so situated and shaped that such development is impossible. The owner of the land down to the high-water line is practically the only person that can develop the adjacent water front advantageously, or, indeed, at all; and though the State's title to the land under water may be complete, it cannot furnish access to this land under water without the acquiescence of the upland owner.

Your Committee, in the course of this investigation, has, in addition to hearing a great deal of testimony, made various examinations of the shore front of the State; and, in the examination of one section of the State, running from Elizabethport, on Newark Bay, through the Kill von Kull, up the Bay of New York and up the Hudson River, above Fort Lee, to the beginning of the Palisade Reservation, was impressed by the importance and the magnitude of the Commercial development of this shore front.

The water front of Elizabeth, of Bayonne, of Jersey City, of the city of Hoboken, shows the magnificent development that has taken place, and while your Committee is mindful of the large present value of this water front, it is also impressed with the enterprise, skill and the enormous amount of money involved in this development. It also recognizes that neither the State nor the municipalities could ever have advanced the money necessary to have made these improvements, nor would they have possessed the foresight or skill to have successfully planned them.

So that your Committee is not prepared to advise that the policy which has made possible this development was altogether wrong; nor is it, on the other hand, prepared to endorse the ideas advanced by the present Chairman of the Riparian Commission, that any great inducement is now needed to cause a sale of these commercial waters of the State. It has seemed to your Committee, and the evidence corroborates the impression, that this doctrine had been carried to a point reprehensible in its workings and disastrous to the school fund, to which the proceeds from the sale of the riparian lands are irrevocably applied.

There is no question in the mind of the Committee that the board preceding the present Riparian Commission, in making sales of water front land on the Hudson river at $40 a foot; and in quit-claiming the rights of the State, as in the Goetchius case, to valuable water front on the Hudson river at Fort Lee, without a judicial decision of the rights of the State in said lands, was derelict, if not worse than that, in discharging their duty; the granting of licenses to railroads without adequate compensation and without observing the law in relation to the rights of the shore owners affected, was a great wrong to the State, as well to the upland owners, and resulted in the loss of thousands of dollars to the school fund.

Your Committee recommends that not only shall no such unwarranted inducements, as have characterized some of the past

grants, be hereafter offered, but that the Riparian Commission, or other body hereafter charged with this property of the State, diligently inquire into and inform itself of the value of these remaining lands, and while encouraging the establishment of industries on the shores of the State of New Jersey, have due regard to the immense and growing value of its water front.

LESSON OF THE RAILROAD LICENSES.

The courts have decided that such licenses are void without notice of the application to the riparian owner; and this Committee not only recommends that hereafter full and ample notice of such applications be given to all riparian owners affected, and that hearings be fixed in which the relative interests of the parties may be discussed and conserved, but it also recommends that the fundamental question itself be referred to the Attorney General for an exhaustive opinion on the question whether, under the general railroad law and the powers conferred upon the Riparian Commission, an occupation of the lands under the waters of the State of a strip parallel with and contiguous to the shore, is properly the subject for exercise of the Commission as a railroad "crossing," and that he define, for the use of the Commission, the meaning of such section (now section 16) of the railroad law.

And this Committee further advises that in all cases where the interpretation of an old act of the Legislature is involved, purporting to convey riparian interests, the fullest investigation be had, and the opinion of the Attorney General be secured as to the legal status of these legislative grants, before any action is taken by the Riparian Commission.

THE OYSTER QUESTION.

It has been claimed before this Committee by those interested in the public use of oyster lands, that the Riparian Commission has made grants in front of the lands of riparian owners to such owners where natural and public oyster grounds are located. There was testimony on both sides of this question, and in view of the opinion of the Attorney-General hereto annexed, your Committee recommends that no further grants be made by the Riparian Commission in the neighborhood of oyster lands until the Oyster Commission of the county in which the lands are

situated be notified, so that the true facts may be ascertained, and in the event of it appearing that the Oyster Commission has jurisdiction over the land proposed to be conveyed, that action be delayed until the requisite legislation suggested in the Attorney General's communication be obtained.

GRANTS TO MUNICIPALITIES.

Inasmuch as the State cannot develop the lands under water, where riparian lands are owned by municipalities, it is apparent that these lands are taken out of the market for general commercial development, and to that extent their value is impaired or reduced, and, as their use is directly for the public good, it is believed that a wise policy for the future would warrant the leasing of these lands under water to the municipalties at figures that take into account this reduced value, with the provision that whenever their public use by the municipalities ceases, they shall revert to the State. It is thought that in this recommendation the actual value of the lands in question will be secured, and the municipalties will be aided as well.

GRANTS IN FEE.

A great deal of criticism has been directed against the practice of the Riparian Commission in making grants in fee and leases in perpetuity. The attention of your Committee was particularly given to this subject.

Hearings of the Committee were publicly advertised, and personal notices sent to those people of the State and adjoining states who might reasonably be supposed to be interested in this subject to appear before the Committee and give it the benefit of their judgment.

A large number of representative men—men who own water front property as manufacturers, or who were attorneys for such holders of water front property, or who were interested in the sale and development of the same—appeared before the Committee; and, of all the men who so appeared on this subject, but one argued in support of limited leases and against the practice of making grants in fee or perpetual leases; but, with one single exception, all of these men, intimately interested and connected with this subject, advocated the continuance of the practice which has obtained in the past.

The following are a few of the opinions expressed:

Mr. P. Sanford Ross, the head of a large dredging and dock building company, said:

> "To those people who own their own water fronts, by grant, in a financial way, I consider the stopping of making grants would be an advantage to them, make their lands more valuable. I think it would be a bad thing for the State to decide to make no more grants and merely make leases, for the reason that improvements to these lands are very expensive. The bulkheading and filling would represent three to four times, and may be five times in some cases, the value of the grant purchased from the State. The improvements are generally very important work, costing hundreds and thousands of dollars, and sometimes running into millions of dollars, and the people who want these lands want them for large manufacturing and commercial interests, and have to make or should make permanent improvements. If they own the land they would not hesitate to make such improvements. If they were not able to buy the land under water, but only lease the land, even though it were for a long term, I think the tendency would be to make as economical improvements as possible, what might be called temporary improvements, which would not certainly be as attractive as more permanent improvements, and would be less valuable.
>
> "Then, again, it would not attract large interests to our shore if they could be accommodated elsewhere, as they could be in Staten Island and at Newton creek, although that is pretty well improved.
>
> "Now, on the shore of Long Island and at Mott Haven, there is still a large property to be secured. The tendency would be to stay away from New Jersey, although their preference would be to come here."

Mr. Harrison Van Duyne, Civil Engineer, representing important industries on the Passaic river at Newark, testified:

> "So that in my judgment it is tremendously against the interests of any municipality to have its water front put in that position of a leasehold, unless the State is in the position of being ready to buy the shore front. You must remember the State could not get on its property

except from the water side, unless the State is ready to put itself in the positions of buying the shore there and building the docks."

Frederick Seymour, Esquire, of Orange, representing important commercial interests on the Hudson river, said:

"Our application has been pending two years. A good part of that time we have been trying to fight down this price; we thought it was unfair and unjust, jumping us from $60 to $150, but we were never able to persuade the Riparian Commissioners to take our view of the matter, and we have, therefore, accepted the inevitable, and, so far as lies in our power, have accepted the valuation which they have put upon it. It would be, it seems to me, the height of foolishness for us to accept a lease of 20 or 25 years for property the extreme value of which is now placed at $50,000, when to utilize it we must put from $350,000 to $400,000 of additional value upon it; not in buildings which will deteriorate, not in the superstructures, but in the making of this land under water land above water, so that it can be used for putting buildings there; so that it can be used for any purpose whatever. If we should have a 20 or 25 years' lease for nothing, I don't see how any man would be justified in sinking there $350,000 or $400,000, which would become the property of the State at the termination of that lease, unless the State is prepared to say that it will buy from us the land we have made there at that time. Of course, I haven't given that any very serious consideration, in view of the fact that the proceeds of the riparian lands are devoted to the school fund, but I have had some difficulty in seeing where the State would get the money to do it. I suppose it might be appropriated from the general fund."

H. A. Smythe Martin, Esquire, the president of the Water Front Improvement Company:

"Now, for the last year, I have worked simply with factories to bring them to this piece of property, but I can't get anybody to settle there on a lease. No one will take a lease and build a factory there and go to the expense of bulkheading, the expense of filling in, and the expense of dredging, after you get your alleged water front, which is a mud front along there. These

expenses are so excessive that no one would do it, for two reasons. No sound business man could get any backing—any assistance financially. Both these companies there mortgaged their plants. The Pearline Company issued bonds, and only did so by paying off the mortgage, and I have a letter which answers the question which was put to me the other day by the Riparian Commission, 'How soon will you exercise your right to convert this lease into a grant'? I said just as soon as the property is sold from time to time, or as soon as we get the ready money. I said, we are carrying a very heavy piece of property, sixty acres, and out of that sixty acres we have eighteen acres of meadow land; all the rest is the side of a hill. We are going to take down the side of the hill and throw it into the front, as soon as we can, and fill in back of the bulkhead with ashes, if necessary.

"Now, gentlemen, I do not want to take too much of your time. I want to say, after years of experience in developing property and selling it to factories, I have not met one manufacturer who would consent to build on it. I can put in the hands of the Chairman letters signed by manufacturers there, stating that they would not have established there, if they could not get grants on property along that coast. Now, I do not think the proverbial fellow who builds his house on the sand would be anything more than a monument of wisdom compared with manufacturers building on leased ground. He has got to bulkhead and then place his factory there; put piles in. The expense is enormous. It is our final decision. We will not take a lease convertible into a grant for our business. I thank you, gentlemen, for your kind attention."

From these and other expressions, your Committee is convinced that all it is justified in recommending is that when the interest of the State will be best conserved by a limited lease, it be hereafter given, with proper provisions for an appraisement at the end of the term, that when such leases cannot be advantageously made, the prices fixed for grants in fee shall, as far as possible, anticipate the advance in value in the near future.

During the course of our investigation, the Attorney-General was requested to advise your Committee upon several interesting legal questions bearing upon riparian matters, and your Committee takes pleasure in annexing to this report a copy of his opinion thereon.

In closing, your Committee begs leave to make the following recommendation:

The investigation made by your Committee has impressed it with the great importance of a careful conservation of the interests of the State in its remaining riparian lands, and, in order to maintain this, and at the same time bring about simplicity and economy, it has seemed to your Committee judicious to advise the amalgamation into one responsible board, of the Riparian Commission and several other existing and projected Commissions who will have in charge important and kindred interests of the State. Should this be done, the State could well afford to pay the members of such a unified commission a sum sufficient to induce them to devote their personal energies and attention more completely to the important interests that would then be committed to their charge. Your Committee believes that there is danger of there being too many Commissions and boards in existence in our State. Rivalries and conflicts are apt to ensue, and a lack of attainment, due to a division of labor and a want of responsibility. It is believed that the time is now ripe to unite in the responsible charge of one board many commissions having germane subjects in charge, and that to such a body it would be advisable to commit the future guardianship of our riparian interests.

In any event your Committee recommends that the headquarters or offices of the persons having in charge the riparian interests be removed, with all documents and records of the Riparian Commission, to suitable offices in the State House Building, as speedily as accommodations can be found there for them. Your Committee sees no reason why a separate office should be maintained in Jersey City for this Commission, or for its successor. Your Committee further believes that legislation to cure the defects in the present riparian laws, pointed out in the opinion of the Attorney-General, should be enacted without delay and as soon as it shall be determined what body shall have in charge the riparian interests of the State in the future. It is apparent that the laws are at present in a most unfortunate, if not in a fatally defective condition, and that no time should be lost in remedying this.

We have requested the Attorney-General to prepare at his earliest convenience legislation in accordance with the foregoing recommendations.

A. N. BARBER,
FRANK CROWTHER,
SAMUEL P. JONES,
WALTER S. REED,
OLIVER C. HOLCOMBE,
EDMUND W. WAKELEE,
JOHN BOYD AVIS.

I agree with the foregoing report except as to the recommendation concerning grants. I would limit the making of grants to lands upon which manufacturing plants are to be erected. In other cases I would limit the Riparian Commission to the making of leases.

JAMES F. MINTURN.

STATE OF NEW JERSEY,
OFFICE OF THE ATTORNEY-GENERAL,

ROBERT H. MCCARTER, Attorney-General.
NELSON B. GASKILL, Assistant Attorney-General.

TRENTON, N. J., March 18, 1907.

Hon. Edmund W. Wakelee, Chairman, &c.

MY DEAR SENATOR WAKELEE—Pursuant to the request of your Committee, I have given considerable attention to the examination of the legal matters involved in the questions submitted by your Committee to me for an opinion, and the Assistant Attorney-General, at my request, has given the subject a most thorough and exhaustive study. He has prepared the accompanying opinion, which I have carefully examined, and inasmuch as the conclusions he reaches are the same as those I had reached upon an independent investigation, and he has, in my judgment, so plainly expressed those views in the opinion, I have not deemed it worth while to personally rewrite another opinion, and I take pleasure, therefore, in enclosing you this memorandum, as containing, what I believe to be, the correct answers to your inquiries.

Yours very respectfully,

ROBERT H. McCARTER,
Attorney-General.

Hon. Robert H. McCarter, Attorney-General of New Jersey.

SIR—In accordance with your request that I consider certain questions propounded by the Committee of the Senate and House of Assembly of the State of New Jersey, appointed to investigate the granting of riparian lands by the State, I beg to submit the following:

This Committee has first asked to be furnished with an opinion as to the legal and constitutional power of the Riparian Commission under the present acts of the Legislature to make grants and leases of lands under water belonging to this State. To be legal the creation and power of the Riparian Commission must first be constitutional, and I shall, therefore, consider first the constitutional aspect of the question presented, which will, I think, determine the legal situation, as will appear hereafter.

The Riparian Commission as now constituted seems to have had its origin in an act entitled "An Act to ascertain the rights

of the State and of the riparian owners in the lands lying under the waters of the Bay of New York, and elsewhere in this State," approved April 11, 1864 (*P. L. 1864, p. 681*).

The purpose of the act, as stated in the title, is clearly inquisitorial. The body of the act throughout the entire enacting clause, indicates that investigation and report is the sole purpose for which the Commission is authorized and appointed

The preamble of the act recites that grants of land lying under water are being made without sufficient information as to the rights of the State and the rights of the riparian owners; and, therefore, with a view to obtaining proper information,

Section 1 authorizes the appointment of a Board of Commissioners, whose power and duty shall be to cause necessary surveys and examinations to be made, and obtain all needful information from other sources, "in order to ascertain the present rights of the State in the same, and the value of the said rights." The Commission was also directed to fix an exterior bulkhead line, to report to the next Legislature the result of their investigation and inquiry, and the location of the exterior bulkhead line, as it might seem best to them to have the same fixed, and also "to recommend to the Legislature such plans and provisions for the improvement, use, renting or leasing of the said lands," to prepare the necessary maps, etc., to make clear to the Legislature to which they were to report the substance of their recommendations.

Section 2 prohibits any further grants, leases or sales until the coming in of this report.

Section 3 provides for the oath of the Commissioners, and also that they shall not become interested in any lands lying under water, or any other real estate that might in any way be benefited by the adoption of any measures that they might recommend.

Section 4 provides for the filling of vacancies that may occur in the Commission.

Section 5 authorizes the Commission to appoint surveyors and agents.

Section 6 provides for the compensation of the Commissioners.

Section 7 provides that public notice of meetings shall be given.

It will be seen at once that there is nothing in this act which contemplates the formation of a permanent Commission, holding the necessary delegation of power from the Legislature to make grants and leases of the State lands.

The report of this Commission was presented to the Legislature of 1865 (Legislative Documents, 1865). The language of the report sufficiently indicates that the Commissioners considered their powers to be limited to inquiry and investigation, nor did they believe that it lay within their power to inquire into at least one of the matters which was presented to them, for they distinctly stated that in their judgment the status of the rights of riparian owners was a judicial question over which they had no authority, and into which, therefore, they did not inquire. They state at length the details of their inquiry and investigation, the theories which they developed and upon which they submitted their report and recommendation. The minutes of the House of Assembly and the Senate Journal for 1865 show that this report was ordered printed, and instead of being acted upon by the Legislature, to which it was submitted, a special joint committee of both Houses was created, to which the report was submitted for action.

Until the session of 1869 no action appears to have been taken upon this report, nor does an examination of the Minutes of the Assembly or the Senate Journal give any light as to the further operations of the Commission appointed in 1864, but there appear in 1869 an act of the Legislature entitled "A Supplement to an act entitled 'An Act to ascertain the rights of the State and of the riparian owners in the lands lying under the waters of the Bay of New York, and elsewhere in this State,' approved April eleventh, eighteen hundred and sixty-four," which was approved March 31, 1869 (*P. L. 1869, p. 1017*). This act refers to the act of 1864, and to the report of the Commission appointed in accordance therewith, made to the Legislature of 1865, adopts the recommendations of the report of 1865, in so far as the fixing of a bulkhead line is concerned, and then authorizes the appointment of four Commissioners to complete the work of the prior Commission, but, in addition, this supplement to the Act of 1864, which was an act authorizing an inquiry, gives to these Commissioners now authorized to be appointed, power to execute leases in perpetuity to holders of legislative grants, and by another section thereof to grant or lease lands under water. The Commissioners so appointed appear to have been the first of the Riparian Commissioners as now constituted.

This supplement of 1869 was followed by a further supplement in 1871, entitled "A Further Supplement to an act entitled 'An act to ascertain the rights of the State and of the riparian

owners in the lands lying under the waters of the Bay of New York, and elsewhere in this State,' approved April eleventh, eighteen hundred and sixty-four," approved March 21, 1871 (*P. L. 1871, p. 44*). The purpose of this act was to authorize the Commission as constituted under the first supplement, to lease or grant the lands of the State lying under water, except in certain locations.

This was followed by an act entitled "A Supplement to an act entitled 'An act to ascertain the rights of the State and of the riparian owners in the lands lying under the waters of the Bay of New York, and elsewhere in this State,' approved April eleventh, eighteen hundred and sixty-four," approved April 4, 1872. This act authorized the Commissioners to make changes in the line for solid filling, to prohibit encroachments, and to lease or sell lands lying under water fronting on certain established basins.

Next, an act entitled "A Further Supplement to an act entitled 'An act to ascertain the rights of the State and of the riparian owners in the lands lying under the waters of the Bay of New York, and elsewhere in this state,' approved April eleventh, eighteen hundred and sixty-four," approved March 27, 1874. The purpose of this act was to regulate the number of votes in the Commission necessary to grant or to lease any lands lying under water, and also declare who should prepare and who should pay for the preparation and execution of such leases.

An act entitled "A Further Supplement to an act entitled 'An act to ascertain the rights of the State and of the riparian owners in the lands lying under the waters of the Bay of New York, and elsewhere in this State,' approved April eleventh, eighteen hundred and sixty-four," approved March 27, 1874. This act has reference to the payment for riparian lands taken by a company incorporated under the act entitled "An act to incorporate a company to form an artificial navigation between the waters of Newark Bay and New York Bay," approved March 18, 1866.

This was followed in 1875 by an act entitled "A Further Supplement to an act entitled 'An act to ascertain the rights of the State and of the riparian owners in the lands lying under the waters of the Bay of New York, and elsewhere in this State,' approved April eleventh, eighteen hundred and sixty-four," approved April 5, 1875. This act authorized the riparian commissioners to retain and expend a certain per centum of the amounts named in the grants or leases made to the riparian owners to cover the cost of mapping, &c.

The next act was entitled "A Supplement to an act entitled 'An act to ascertain the rights of the State and of the riparian owners in the lands lying under the waters of the Bay of New York, and elsewhere in this State,' approved April eleventh, eighteen hundred and sixty-four," approved March 9, 1877. This act declares when the owner of land shall be held to be the riparian owner for the purpose of receiving grants of land lying under water, &c.

Then came an act entitled "A Supplement to an act entitled 'An act to ascertain the rights of the State and of the riparian owners in the lands lying under the waters of the Bay of New York, and elsewhere in this State' (Revision), approved April eleventh, eighteen hundred and sixty-four, and the several supplements thereto," approved April 20, 1885. (Why this supplement entitles the original act a revision does not appear, for there is absolutely nothing in the body of the act which has any of the character of a revision, and the title "Revision" was soon dropped, as appears by the further recitals). This act authorized the Commissioners to classify themselves, provide the terms of commissioners hereafter to be appointed, and for the filling of vacancies.

This was followed by an act entitled "A Supplement to an act entitled 'An act to ascertain the rights of the State and of the riparian owners in the lands lying under the waters of the Bay of New York, and elsewhere in this State' (Revision), approved April eleventh, eighteen hundred and sixty-four, and the several supplements thereto," approved March 6, 1888. This act prohibited the issuance of grants of land upon which were located natural oyster beds, except for certain declared purposes.

The following act was entitled "A Further Supplement to an act entitled 'An act to ascertain the rights of the State and of the riparian owners in the lands lying under the waters of the Bay of New York, and elsewhere in this State' (Revision), approved April eleventh, eighteen hundred and sixty-four, and the several supplements thereto," approved March 27, 1888. This act considered the method of the appointment of commissioners and declared their term of office.

The following act was entitled "A Supplement to an act entitled 'A Further Supplement to an act entitled 'An act to ascertain the rights of the State and of the riparian owners in the lands lying under the waters of the Bay of New York, and elsewhere in this State," approved April eleventh, eighteen hundred and sixty-four,'

which supplement was approved April fifth, eighteen hundred and seventy-five," approved April 17, 1888. By this section one of the supplements was amended so that the Commissioners were authorized at the request of riparian owners to extend surveys already made.

The following act was entitled "A Further Supplement to an act entitled 'An act to ascertain the rights of the State and of the riparian owners in the lands lying under the waters of the Bay of New York, and elsewhere in this State,' approved April eleventh, eighteen hundred and sixty-four," approved April 18, 1889. This act considered the method of appointment of commissioners, their term of office and the filling of vacancies.

The next act was entitled "A Further Supplement to an act entitled 'An act to ascertain the rights of the State and of the riparian owners in the lands lying under the waters of the Bay of New York, and elsewhere in this State,' approved April eleventh, eighteen hundred and sixty-four, and the several supplements thereto," approved April 19, 1889. By the terms of this act cities were empowered to apply for grants of land lying under water.

The following act was entitled "A Further Supplement to an act entitled 'An act to ascertain the rights of the State and of the riparian owners in the lands lying under the waters of the Bay of New York, and elsewhere in this State,' approved April eleventh, eighteen hundred and sixty-four," approved February 10, 1891. This act authorized the Riparian Commissioners to establish exterior lines for solid filling and wharf lines in tidal waters, and further authorized the Commissioners to sell or let lands under water.

The next act was entitled "A Further Supplement to an act entitled 'An act to ascertain the rights of the State and of the riparian owners in the lands lying under the waters of the Bay of New York, and elsewhere in this State,' approved April 11th, 1864," approved March 20, 1891. The purpose of this act was to authorize the Commissioners to license persons to dig, dredge, &c., from lands of the State lying under water, and further provided for the leasing and sale of lands lying under water.

The next act was entitled "An act to amend an act entitled 'A Supplement to an act entitled 'An act to ascertain the rights of the State and of the riparian owners in the lands lying under the waters of the Bay of New York, and elsewhere in this State,' approved April 11th, 1864, which was approved March 31st, 1864,"

approved March 20, 1891. This act provided that no person should fill in lands lying under water without a grant from the Commissioners first had and obtained.

The next act is "A Further Supplement to an act entitled 'An act to ascertain the rights of the State and of the riparian owners in the lands lying under the waters of the Bay of New York, and elsewhere in this State,' approved April 11, 1864," approved April 19, 1895. This act provided that leases and grants of lands lying under water in front of the palisades of the Hudson should be subject to certain conditions.

This was followed by an act entitled "An act to amend an act entitled 'A Further Supplement to an act entitled 'An act to ascertain the rights of the State and of the riparian owners in the lands lying under the waters of the Bay of New York, and elsewhere in this State,' approved April 11, 1864,' which supplement was approved February 19, 1895," approved May 18, 1898. This amendment changed the conditions under which grants in front of the palisades of the Hudson should be made.

The following act is entitled "A Further Supplement to an act entitled 'An act to ascertain the rights of the State and of the riparian owners in the lands lying under the waters of the Bay of New York and elsewhere in this State,' approved April 11, 1864," approved March 22, 1901. The purpose of this supplement was to secure riparian lands for public parks, authorizing the Commissioners to make such grants, providing for the consideration, the reversion and future conveyances.

An act entitled "A Supplement to an act entitled 'A Further Supplement to an act entitled 'An act to ascertain the rights of the State and of the riparian owners in the lands lying under the waters of the Bay of New York, and elsewhere in this State,' approved April 11, 1864, and the several supplements thereto,' which said supplement was approved April 19, 1899," approved March 7, 1901. This act provided that riparian rights facing public parks may be devoted to business purposes, and that such use should not work a forfeiture of the grant to the municipality.

This was followed by an act entitled "A Further Supplement to an act entitled 'An act to ascertain the rights of the State and of the riparian owners in the lands lying under the waters of the Bay of New York, and elsewhere in this State,' approved April 11, 1864," approved April 8, 1903. This act added to the powers already given the Commissioners to make grants of lands lying under water for Park purposes, the consideration, the reversion and the future conveyances thereof.

All the acts which have been enumerated above have been supplements by title as well as supplements by object. There are three acts, however, which are clearly supplements by object not so entitled. These are, the act of 1871, entitled "An Act relative to the Riparian Commission" (*P. L. 1871, p. 113*).

The preamble recites that doubts have arisen as to grants of land which were, but are not now, under tide water, and in view of the fact that leases containing grants and conveyances authorized by Section Four of an act entitled "A Supplement to an act entitled 'An act to ascertain the rights of the State and of the riparian owners in the lands lying under the waters of the Bay of New York, and elsewhere in this State,' approved April eleventh, eighteen hundred and sixty-four," approved March 31, 1869, and the joint resolution of 1870, are more satisfactory.

Section 1 authorizes the "said commissioners" to grant and to convey lands lying under water under certain specified conditions.

It is clear from the reading of this act that it is not a separate act, but is, in fact, a supplement as clearly as though it were so entitled. It could not stand alone as an independent act. It does not purport to create or to delegate any power to the body whose operations it limits. It has life and force only as it applies to the prior acts of 1869 and 1864.

The second act with a distinctive title is "An act to reorganize the Board of Riparian Commissioners of this State," approved March 10, 1892. This act affects only the constitution of the Board, provides that the term of office of the then present Board shall expire at a certain time, and fixes compensation. This act does not in any sense affect the powers and duties of the Commission; is not a revision, but merely affects the administrative organization.

This is true of the third act entitled "An act to reorganize the Board of Riparian Commissioners of this State," approved May 9, 1894.

None of these three acts standing alone could give to the Board of Riparian Commissioners, as now constituted, any power or vitality which it would not have otherwise than through the various supplements to the act of 1864.

The Constitution of 1844, in force at the time of the passage of the original legislation, contains this provision: "To avoid improper influences which may result from intermixing in one and the same act such things as have no proper relation to each

other, every law shall embrace but one object, and that shall be expressed in the title." *Constitution of 1844, Article IV., Section 7, Par. 4.*

This clause remained unchanged by the amendment of 1875, and is, therefore, in force at the present time. *Constitution of New Jersey, Article IV., Section 7, Par. 4.*

The constitutionality of the present Board of Riparian Commissioners depends upon the solution of the question as to whether the powers and duties of the Commission arising out of the various supplements to the act of 1864 can fairly be said to be embraced in the title of the act of 1864.

The object of the original act was an investigation and inquiry and a report. The appointment of a permanent Commission, with power to make grants or leases of the State's lands lying under water has no such relationship to the proposed inquiry that it can be deemed to follow as a necessary or implied portion of the avowed purpose of that original act, that is to say, the investigation. Aside from deductive reasoning, the fact that the report of the Committee, made to the Legislature of 1865, was laid over until acted upon by the Legislature of 1869, with the creation thereby of a new Commission, with additional powers, shows clearly the separation of the two objects. The investigation being closed, the Commission was created and endowed with a delegation of power by the Legislature.

The rule of law may be thus stated:

> "The unity of the object must be sought in the end which the legislative act purposes to accomplish, and not in the details provided to reach that end. The degree of particularity which must be used in the title of an act rests in legislative discretion, and is not defined by the constitution. There are many cases where the object might with great propriety be more specifically stated, yet the generality of the title will not be fatal to the act, if by fair intendment it can be connected with it."

Walter v. *Town of Union, 4 Vr. 350; Deegan* v. *Morrow, 2 Vr. 136.*

This is the general rule by which the relationship between the various supplements to the parent act must be tested. Can the object of the supplements by fair intendment be connected with the investigation stated as the purpose of the act of 1864?

Certain cases appear in our reports in which it was held that

the object of various acts could not by fair intendment be connected with expressions of the title, and, in my judgment, none of these present so strong a ground of variance as that now under consideration. *Rader* v. *Township of Union, 10 Vr. at page 515; Hendrickson* v. *Fries, 16 Vr. 555.* In this case Depue, J., said:

> "Under the provision of our constitution, the title of a statute is not only an indication of the legislative intent, but is also a limitation upon the enacting part of the law. It can have no effect with respect to any object that is not expressed in the title."

Citing cases.

Daubman v. *Smith, 18 Vr. at page 202,* where MAGIE, *J.*, said, citing cases:

> "Upon these cases it must be considered as settled in this State that when a legislative act is designed to effect one object, it will not be objectionable because it embraces details and incidents comprehended within the object. If the whole act in each part be germane to one plain end, the constitutional requirement will be satisfied, although the act comprehends a variety of incidents. But whenever parts of an act are not germane to, or comprehended within, its plain object, then the legislation is objectionable under this clause.
>
> "In like manner it must be taken as indisputable that the title of an act must fairly express its single object. * * * When the title is inapt to express the obejct, or deceptive in its expression, then the legislation is repugnant to this clause."

Lane v. *State, 20 Vr. 673; Dobbins* v. *Northampton, 21 Vr. at page 499.* This was a decision by GARRISON, *J.*:

> "The constitutional mandate that the object of every law shall be expressed in its title, has given the title of an act a twofold effect. It has added additional force to the title as an indication of legislative intent in aid of the construction of a statute couched in language of doubtful import, and it also operates as a constitutional limitation upon the enacting part of the law. The enacting part of a statute, however clearly expressed, can have no effect beyond the object expressed in the title. To maintain any part of such a statute, those portions not embraced within the purview of the title must be

> exscinded; and if the superaddition to the declared object cannot be separated and rejected, the entire act must fail."

Citing cases. *Falkner* v. *Dorland*, *25 Vr. 409*.

Nor does it save an act from the operation of this rule, if the matters not expressed within the title have been added in the form of supplements. If the objects of the supplements do not fairly come within the object expressed by the title of the supplemented act they are repugnant to the constitutional provision, though the original act may still stand.

In *Rahway Savings Institution* v. *Rahway*, *24 Vr. p. 51*, MAGIE, *J.*, said:

> "The ordinary meaning of the word 'Supplement' doubtless is a 'supplying by addition of what is wanting.' A glance at our legislation from the time of the adoption of the constitutional provision will show that the word has constantly been used in a sense so broad as to possibly justify a claim that it has acquired thereby a special meaning broader than the ordinary one. But for the purposes of this case it is sufficient to say, that the ordinary meaning of the word will, under our construction of this clause, cover every species of amendatory legislation which goes to complete the legislative scheme."

So in *New York, &c., R. R. Co.* v. *Montclair*, *2 Dick. 592*, opinion by REED, *J.*:

> "The defect is, that the title of the act does not express the subject of the legislation, but is vague and misleading. The title is this: "An act entitled 'A supplement to an act entitled 'An act to authorize the formation of railroad corporations and regulate the same,' approved April 2, 1873," which supplement was approved March 31st, 1882.
>
> "It is perceived that while the act does not purport to be a supplement to the supplement of March 31st, 1882, its effect is to leave the impression that it is a supplement to the earlier supplement.
>
> "Any person reading the title to the act would conclude that the subject of the statute was the same as that involved in the act of March 31st, 1882.
>
> "Now, the act last mentioned deals with a subject entirely foreign to the subject-matter of the present stat-

> ute. * * * It is too obvious for argument that the title was entirely misleading, and so encounters the constitutional requirement. For this reason the act is void."

See also *Hann* v. *Bedell, 38 Vr. 148.*

It may be argued in opposition to the result I have thus stated that the lapse of time during which the existence and operation of the Board of Riparian Commissioners has received at least tacit acquiescence, will operate as a bar to a present adverse decision. But I am not convinced of the sufficiency or conclusiveness of this contention.

The authorities which might be urged against the opinion which I have reached are:

Board v. *Cronk, 1 Halstead 120.*

> "Where a statute has already received its construction and where the practice under it has been uniform for fifty years or more, and so become the settled law of the land, it would be going a great way for a court to give it a new construction under the pretence of making it better."

So in *State* v. *Kelsey, 15 Vr. at p. 22.*

> "Long and continued usage furnishes a contemporaneous construction which must prevail over the mere technical import of the words."

And on p. 48, MAGIE, *C.*, supports the rule as elsewhere cited:

> "The rule amounts to no more than this, that if the act be susceptible of the interpretation which has been put upon it by long usage, the courts will not disturb that construction."

Board of Assessors v. *Central R. R. Co., 19 Vr. 304; Fritts* v. *Kuhl, 22 Vr. 191; Engeman* v. *State, 25 Vr. 247; McNeal Pipe Co.* v. *Lippincott, 28 Vr. 542,* where MAGIE, *C.*, said:

> "If, however, there was a debatable question as to the true construction of the act, then as the interpretation I have indicated is clearly admissible, we should be bound by the contemporaneous and continuous exposition exhibited in the usage and practice under it, to give it that construction."

Answering the argument so based, it occurs to me that the interpretation of the constitutional clause is not now involved. That clause has received its interpretation. The question is rather as to whether that interpretation can now for the first

time be applied to a statute of long standing to determine its validity. Had this test been applied to the supplement of 1869 with reference to the supplemented Act of 1864, at or following its enactment, I am quite clear that the supplement must have fallen. But there has been no interpretation of this difficulty and therefore no construction acquiesced in. Indeed, it is hard to see how the question could have been raised. As between the State and its grantee, neither apparently had any reason to question the constitutionality of the act creating the Board of Riparian Commissioners and an outsider would have no standing in a collateral attack.

So far, therefore, from the existence of a long standing acquiesence in an accepted construction, it seems that there has been no construction whatever, merely a default in applying the terms of an interpreted clause of the constitution to the facts at hand. I do not believe that this default can operate to prevent the raising of the constitutional bar at this day.

The objects of the various supplements to the Act of 1864 are, in my opinion, not such as can fairly be considered to be concluded within the object of the original act as expressed and limited by its title. These supplements, therefore, fall by their repugnance to the Constitution, and the Commission seems to have been improperly clothed with the powers attempted to be conferred by these supplements.

It becomes necessary to consider, then, the force to be given to the Act of 1871. It is clearly established that this act has not the essential characteristics of an independent act. It does not purport to create a commission to execute the duties and powers conferred, but relates to a prior commission. Was there any such commission then in existence that it could, as a legal body, receive this delegation of power?

As has been stated, the supplement of 1869 creating the commission, granted two separate powers to it. First, the power to continue the investigation authorized by the supplemented Act of 1864, and, second, the power of conveyance. As I have stated, this latter part of the act was void, as not coming within the object of the Act of 1864, to which the Act of 1869 was a supplement. But the Act of 1869 in part seems to have been valid in that it created, with all necessary incidents, a new commission to carry on the investigation in so far as it had been left unfinished by the Commission of 1864, authorized by that parent Act of 1864. In so far, the Act of 1869 seems to have created a Riparian

Commission, to which the Act of 1871 might properly refer as an existing Riparian Commission. And as this Act of 1871 was a general act, not a supplement to the Act of 1864 or 1869, its enacting clause is within the limitations of its title and open to no seeming objections on that score.

I conclude, therefore, that the Act of 1869 created a commission, which derives its only valid powers at present from the act creating it and from the Act of April 6, 1871 (*P. L. 1871, p. 113*).

The matter, however, is not free from doubt. Whether, if the question were directly raised, the courts of this State would hold that the supplement of 1869 was valid for any purpose, cannot be accurately forecasted. They have from time to time considered various statutes in the light of duplicity of objects, and sometimes have sustained these statutes in part. In other instances, upon the ground that the major portion of the act, that which it was the main purpose of the Legislature to enact in execution of their purpose, being faulty, they refused to sustain the statute because an incidental object was properly enacted. And in the Act of 1869 it may well be doubted if the valid portion is the main object, the principal purpose of the act.

The Court of Chancery has, through Pitney, V. C., expressed an opinion, as follows:

> "With regard to the constitutional question, which is based upon the lack of scope of the title of the Act of April 11, 1864, it is to be observed that the riparian grant, under which the complainants in this case claim, was made under the Act of April 6, 1871. * * * * The title of that act is as follows: 'An act relative to the riparian commission.' In this it varies from the several supplements to the Act of 1864, most important of which was the Act of March 21, 1869. * * * * These, by their terms, were mere supplements to the original act, and, therefore, confined in their scope by the title of that act; while the Act of April 6, 1871, is an independent act and its title is sufficiently broad, as it seems to me to include the power to make the grant in question. At the time of its passage the Riparian Commission was an established institution in the State of New Jersey."

While this opinion goes far to sustain the conclusion I have reached, it is not conclusive. How the learned Vice-Chancellor reached his conclusion that the Riparian Commission was an

established institution at the time the Act of 1871 went into effect, does not appear. His views are not fully stated, and his interpretation of the validity of the Act of 1869 not entirely made plain, nor the method by which his result was reached.

It may be, therefore, that the entire superstructure of the Riparian Commission may be without valid foundation upon the Act of 1864, and, consequently, wholly and absolutely void. Or the commission may be endowed with the powers granted by the Act of 1871. That it can have any other powers, I seriously do not consider.

In view of this very grave situation, I strongly recommend immediate remedial legislation. If a revision of the riparian laws is deemed necessary, as I think it most assuredly is, it should cover the field of prior legislation and judicial decision in this State and in other States. The status of past grants should be fixed by a validating act or acts, omitting such grants as the Committee or the Legislature may desire for any reason to have revoked. The whole question involves so many valuable rights, that whatever action is taken should be carefully and well considered.

Again, I am asked "Has the Legislature itself power to grant and lease public lands under water?"

I understand this question to be directed to the jurisdiction of the legislative branch of the government over those rights which are common to all the people, so as to divest the people of such rights and invest a private person or corporation with complete dominion over some portion thereof. I assume, for the purposes of this question, that there is no existing limitation upon the lands of the State lying under water in the nature of a perpetual trust, and will consider, therefore, generally, the power of the Legislature to make grants of State land for private and individual purposes.

Upon the general subject of the right of the State to lands lying under tide water but little remains to be said at this day in New Jersey. That question is fully settled. The State is the successor to the King of Great Britain in this title, and at the Revolution became invested with it as a sovereign, as a representative or trustee of the people of the State. This matter has several times been the subject of judicial investigation, always with the result just stated. In the case of the *Attorney-General* v. *Stevens, Saxton, at p. 380*, the then Chancellor said:

"The right to the use of this navigable stream is a right common to all the people of the State. Before the Revolution the right was in the Crown. The people are now the sovereign power, and the right is vested in them. It is their property, and as such may be disposed of for the common benefit in such way as they may see fit. This disposition can only be made by the Legislature of the State, which is the rightful representative of the people. And when such disposition is made 'consistently with the principles of the law of nature, and the constitution of a well-ordered society,' it must be considered valid. Such, as I conceive, has ever been the sound construction of the legislative power, and its exercise has been in perfect accordance with it."

So, in *Delaware & Raritan Canal Co., &c.*, v. *Raritan & Delaware Bay R. Co., 16 N. J. Eq., at p. 365;* opinion by the then Chancellor:

"The doctrine as attempted to be applied by counsel, carried to its legitimate conclusion, would deprive the Legislature of all power of disposing of public property. The sale of a part of the public domain, in one sense, derogates from the power of future Legislatures. What has once been granted cannot be granted again. And yet the power of the Legislature, as well as of Parliament, to alienate the public domain, to convert arms of the sea, where the tide ebbs and flows, into arable land, to the utter destruction of the common rights of navigation and fishing, is well settled, and has been repeatedly exercised." (Citing cases).

In *Gough* v. *Bell, 2 Zab., at p. 455,*

"It is said in the books that the title to the soil of navigable rivers, and to the shores of the sea, and of the arms of the sea, is a branch of the King's prerogative, of which he cannot divest himself; that the title is in him in trust for the public; that the rights of navigation and of fishery, and the use of the shores of the sea, are common rights, of which the people cannot be divested, except by their consent. Hence, they cannot be aliened by the Crown." (Citing cases.) * * * *

"Whatever doubts may exist in regard to the power of the King to dispose of common rights, there exists none in regard to the power of Parliament. Parliament

not only may, but does, exercise the power of aliening the public domain, of disposing of common rights and of converting arms of the sea, where the tide ebbs and flows, into arable land to the utter destruction of the common rights of navigation and fishing.

"This power is attributed to the omnipotence of Parliament, and it is said that no such omnipotence is vested in the Legislature. The Legislature, it is true, is not omnipotent in the sense in which Parliament is so. It is restrained by constitutional provisions. Its powers are abridged by fundamental laws. But it would seem clear, upon principle, that in every political existence, in every organized government, whatever may be its form, there must be vested somewhere ultimate dominion, the absolute power of disposing of the property of every citizen. In this consists eminent domain, which is an inseparable attribute of sovereignty. This constitutes the omnipotence of Parliament. If the Legislature may dispose of the property of each individual citizen for the public good it would seem to be no greater exercise of power to dispose of public property or the common rights of all the people for the same end. The objection to an alienation of the public domain by the King is that he is but a trustee for the community. But the Legislature are not mere trustees of common rights for the people. These rights are vested in the people themselves; the Legislature, in disposing of them, act as their representatives, in their name and in their stead. The act of the Legislature is the act of the people, not that of a mere trustee holding the legal title for the public good."

So in *Stevens* v. *Paterson and Newark R. R. Co., 5 Vr. 533,* and *Hoboken* v. *P. R. R., 124 U. S. 656.*

A number of other cases might be cited, but the above are sufficient to indicate the trend of the authorities in this State. The cases referred to have been cited with approval again and again until the propositions therein laid down are no longer open to doubt.

I conclude, therefore, that the Legislature has the power within itself to grant and to lease the lands of the State under water, subject, however, to the existence of a constitutional limitation.

The third question propounded to me is, "Has the Legislature the power to delegate to any board or body whatever authority the Legislature itself may have to make grants or leases of the State lands lying under water?"

An examination of the Constitution discloses no direct limitation upon the Legislature in restraint of the delegation of its authority. A limitation has been implied, however, from Art. IV., Sec. 1, Par. 1, which reads as follows:

> "The legislative power shall be vested in a Senate and General Assembly."

The legislative power, therefore, the Legislature cannot delegate to any other body or invest in any individual or corporation. It is the one part of its sovereignty of which, as was said in *D. & R. Canal Co.* v. *Rar. & Del. Bay R. R. Co., 1 C. E. Green 321,* the Legislature cannot divest itself or its successor. It not only may, but must determine in what manner that sovereignty must be exercised

Statutes which carry power to establish boards or organizations must stand or fall according as they are deemed to carry or omit a delegation of the legislative power. Thus it has been determined that a grant of power to a turnpike company to appropriate a public road to their use, with the consent of a majority of the voters of a township, was not improper. *Morgan* v. *Monmouth, 2 Dutch. 99.*

Conferring on a board of freeholders power to fix rates of ferriage is not improper. *Freeholders* v. *State, 4 Zab. 718.*

The Legislature has the right to delegate to the Board of Managers of the Geological Survey the discretion of determining the purpose for which the right of eminent domain should be exercised. *In re Lower Chatham, 6 Vr. 497.*

But the Legislature cannot leave it to a board of commissioners to determine in what proportion the expense of laying out and opening a public avenue shall be imposed on the townships of a county or wards of a city. *Gaines* v. *Hudson Co. Commrs., 8 Vr. 12.*

The General Railroad Law, in respect to the delegation of the power of eminent domain to corporations organized under it, is constitutional. *National Docks R. R. Co.* v. *Central R. R. Co., 5 Stew. 755.*

But again:

> "The power of deciding questions of public policy which relate to the organization and extent of municipal

> corporations is one properly belonging, under our constitution, to the legislative department of the government, and, therefore, it cannot be exercised by any person or persons belonging to or constituting either the executive or the judicial department."

In re Ridgefield Park, 25 Vr. 288.

Similar questions were presented and decided as the facts fell within or without the line of judicial determination in *Gilhooly* v. *Elizabeth, 66 N. J. L. 484; Paul* v. *Gloucester Co., 50 N. J. L. 585; Allison* v. *Corker, 67 N. J. L. 596.*

None of these cases present an exact authority as precedent in the present case. Perhaps those which approach most nearly in similarity are the two cases cited upholding a delegation of the right of eminent domain as constitutional. This is, as I have said, one of the essentials of the sovereignty of the Legislature, and there seems to me that there is nothing distinctive in principle between such a grant of power and that with which it would be necessary to endow a board or commission to enable them to convey the land of the State lying under water, provided the necessary limitations were observed.

I conclude, therefore, that the Legislature can, by an enactment, constitute a proper board for this purpose, and delegate to it the necessary power to execute such right of conveyance of the State's lands as the Legislature itself possesses. But such act should prescribe the terms and conditions of such conveyances and all other details as will leave in the board so constituted merely power to carry out the purposes of the Legislature by means and upon terms specifically prescribed. Too much discretionary power must be avoided, lest thereby the legislative prerogative be encroached upon and the act rendered void.

Fourth. I am asked whether or not these lands owned by the State, lying under water, are not to be held forever inviolate in trust for the people as a fund for the support of public education in this State?

This question covers the matters excluded from consideration in my answer to the second question. And the response to that question must be read in connection with the discussion of the pending question.

The Constitution of 1844 contains this provision:

> "The fund for the support of free schools, and all money, stock and other property, which may hereafter be appropriated for that purpose, or received into the

treasury under the provision of any law heretofore passed to augment the said fund, shall be securely invested, and remain a perpetual fund; and the income thereof, except so much as it may be judged expedient to apply to an increase of the capital, shall be annually appropriated to the support of public schools, for the equal benefit of all the people of the State; and it shall not be competent for the Legislature to borrow, appropriate or use the said fund or any part thereof, for any other purpose, under any pretense whatever." (Art. 4, sec. 7, par. 6).

In similar nature is the provision of the amended Constitution of 1875:

"The fund for the support of free schools, and all money, stock and other property, which may hereafter be appropriated for that purpose, or received into the treasury under the provision of any law heretofore passed to augment the said fund, shall be securely invested, and remain a perpetual fund; and the income thereof, except so much as it may be judged expedient to apply to an increase of the capital, shall be annually appropriated to the support of public free schools, for the equal benefit of all the people of the State; and it shall not be competent for the Legislature to borrow, appropriate or use the said fund, or any part thereof, for any other purpose, under any pretense whatever. The Legislature shall provide for the maintenance and support of a thorough and efficient system of free public schools for the instruction of all the children in this State between the ages of five and eighteen years." (Art. 4, sec. 7, par. 6).

It is clear, therefore, that "all money, stock and other property which may hereafter be appropriated for that purpose, or received into the treasury under the provision of any law heretofore passed to augment the said fund" has passed beyond the sphere of legislative control, except as to the designation of the mode in which the interest and dividends arising therefrom shall be applied for support of public schools. *Amboy Dock & Improvement Co.* v. *Trustees, etc., 8 Stew. 182.*

By an act passed on the 6th of April, 1871, entitled "An act to increase the school fund of the State," it was enacted that "all moneys hereafter received from the sales and rentals of the land

under water belonging to the State shall be paid over to the trustees of the school fund and appropriated for the support of free public schools and shall be held by them in trust for that purpose, and shall be invested by the treasurer of the State under their direction in the same manner as the funds now held by them are invested; the same to constitute a part of the permanent school fund of the State and the interest thereof to be applied to the support of public schools in the mode which is now or may hereafter be directed by law and to no other use or purpose whatever." *(P. L. 1861, p. 98.)*

In 1872 the following statute was passed:

> "That all leases which shall hereafter be made of lands belonging to the State, now or formerly lying under water, or which have been made since the sixth day of April, one thousand eight hundred and seventy-one, shall be transferred to the trustees of the school fund of this State and become a portion of the free school fund; and that the annual income arising from such leases shall be distributed by the said trustees for the support of free public schools in the same manner that other moneys are now distributed for that purpose." *(P. L. 1872, p. 61.)*

The income from the lands of the State lying under water was by force of these statutes and the constitutional provision passed into a "perpetual fund," not subject to subsequent diversion at the hands of the Legislature. This appears to be the first addition to the school fund from the riparian lands of the State.

In 1894, however, a statute was enacted in broader language, and with more extensive import:

> "A supplement to an act entitled 'An act to establish a system of public instruction,' Revision, approved March twenty-seventh, one thousand eight hundred and seventy-four," approved April 24, 1894.
>
> Sec. 1. Be it enacted by the Senate and General Assembly of the State of New Jersey that all the lands under water belonging to this State be and the same hereby are irrevocably appropriated for the support of free schools in this State, and that all moneys hereafter received from the sales and rentals of such lands under water belonging to this State, shall be paid over to the trustees of the school fund and appropriated for the support of free public schools, and shall be held in trust by

them for that purpose and shall be invested by the treasurer of the State under their direction in the same manner as the funds now held by them are invested, the same to constitute a part of the permanent school fund of the State and the interest thereof to be applied to the support of public schools in the mode which now is or may hereafter be directed by law and to no other purpose whatever.

2. And be it enacted that all leases which have been made by this State or any board or officer of this State in pursuance of the provisions of an act entitled 'An act to provide for the use of the proceeds of riparian sales, grants and leases, approved March nineteenth, one thousand eight hundred and ninety,' of lands belonging to the State now or formerly lying under water, be and the same hereby are transferred to the trustees of the school fund of this State to become a portion of the free school fund and that the income arising from such leases shall be distributed by the said trustees for the support of free public schools in the same manner that other moneys are now distributed for that purpose."

(The word "irrevocable" in the first section is unnecessary. The clause of the constitution referred to fixes the permanent quality of the appropriation.)

The school law of 1894 was repealed, but there is no necessity for discussing the question how far such repeal could affect the appropriation to the school fund made therein, since the school law of 1902 practically re-enacts the law of 1894.

Not in precise words, but in effect the same:

"163. All lands belonging to this State now or formerly lying under water are appropriated for the support of public schools, and all moneys hereafter received from the sales of such lands shall be paid to 'The Trustees for the Support of Public Schools,' and shall be invested by said board, and shall constitute a part of the permanent school fund of the State.

164. All leases which have been heretofore made or which shall be hereafter made of such lands, shall be held by 'The Trustees for the Support of Public Schools,' as a part of the principal of the school fund, and the income arising from said leases shall be a part

of the income of said school fund." (*P. L. 1902, p. 127.*)

These two sections *in toto* were included in the present school law and are now in force. *P. L. (Special Session 1903) 1904, p. 63.*

The Act of 1871 appropriated "all moneys" received from sales and rentals and went no farther. By the Act of 1872 "all leases" were transferred to the school fund. But note that the Act of 1894 and the acts following down to the present, appropriate the lands, the moneys and the leases to the permanent school fund.

Upon this situation, three questions present themselves:

1st. Did the appropriation of the lands lying under water, belonging to the State, by virtue of this legislation and the constitutional provision as to "other property which may hereafter be appropriated for that purpose" invest such lands with any restrictions in the nature of trusts for the benefit of the public school fund?

2d. If not, or also, Was the appropriation of the moneys arising from the sale and leasing of the land lying under water, belonging to the State, sufficient to invest the land from which such income must be derived with any restrictions as to conveyance or otherwise in the nature of a trust for the benefit of the school fund to which such income was appropriated?

3d. What was the scope of any such limitation arising under either or both sources and what was its proper effect upon the further alienation of the lands of the State lying under water?

The Act of 1894 and the re-enactment of its provisions in the succeeding and present school laws has resulted in an appropriation of the lands of the State lying under water to the school fund. I do not comprehend that this is sufficient to repeal by implication the previous grant of power to the Riparian Commission, or to prevent the sale or leasing of such lands under any and all circumstances, but, in my judgment, it does give the school fund such interest in these lands that sales or leases, in fact, the management of the State's lands under water must be conducted with a view to realizing the greatest possible benefit from such lands, not to the State at large, but to the school fund as "*cestui que trust,*" in its present and also in its future estates.

Prior to such appropriation, the people of the State were the parties in interest, subsequent thereto the school fund is substituted for the people at large, and any operation, conveyance or

grant in defeasance or in diminution of the lands of the State lying under water which cannot be justified as a realization of the present and also future interest of the school fund therein, is, in my opinion, improper.

Whether this appropriation of the lands themselves to the school fund is permanent depends upon the construction given to the phrase of the Constitution, "all money, stock and other property, which may hereafter be appropriated for that purpose * * * a perpetual fund." If "other property" in that connection be used so broadly as to include realty, then the appropriation has become permanent, but if the phrase is to be qualified by the words "money" and "stocks" to a meaning strictly consonant, then "other property" cannot include realty and the appropriation is subject to repeal at the will of the Legislature.

I incline to the opinion that the rule of interpretation whereby general words following an enumeration of particular words, in a statute, are limited by the particular words to a similarity does not govern this case. But "other property" has in this case a peculiar and forcible significance. Particularly in view of the purpose of the section of the Constitution in which the phrase appears, and the conditions under which it was adopted. Then, as now, the school fund was inadequate for its purposes and constant additions were made to it of taxes, canal stock, turnpike stock and bonds and the like. Therefore, the purpose was to increase the school fund, and an interpretation which narrows and limits the method or sources of increase, seems hostile to the purpose of the framers of the Constitution. "Other property" liberally construed furthers the intended increase of the school fund, and, therefore, I adopt it instead of restricting the meaning of the phrase to personalty. It must be noted, too, that the phrase is conjunctive, not disjunctive. "Other property" is in addition to what has been named before. The maxim *nocitur a sociis* is usually applied where the disjunctive, not the conjunctive, is used. The result is to work a permanent appropriation of the State's lands lying under water to the school fund, removing them from any subsequent and different appropriation by legislative action.

It is to be noted that the case of *Amboy Dock and Imp. Co.* v. *Trustees of Public Schools, 8 Stew. 181* (*March Term 1882*), was decided with reference to the situation existing under the Act of 1871, and possibly the Act of 1872, and prior to the Act of 1894.

This case held that the Trustees for the Support of Public Schools have no control over the State's lands under water; no authority to decide what lands under water shall or shall not be sold, or to fix the price or dictate the terms and conditions on which sales shall be made, nor power to rescind contracts of sale made by the Riparian Commissioners which they may deem prejudicial to the school fund.

In reading this case it must borne in mind that at the time the cause of action arose there had been no appropriation of the lands as such, but only by the Act of 1871 of all moneys received from sales and rentals, and by the Act of 1872 of all leases of riparian lands. I consider that the Act of 1894 and the following acts have made a material difference in the conditions, and I do not accept the decision referred to as a binding authority at the present time.

The case of *Henderson* v. *Atlantic City* (*64 N. J. E. 583*), supports this view.

The constitutionality of the act of the Legislature of March 22, 1901 (*P. L. 1901, p. 374.*) was attacked upon the insistence that the lands thereby authorized to be granted by the Riparian Commissioners were irrevocably devoted to the support of free public schools, while the Act of 1901, referred to, devotes a portion of such lands to other purposes, that is, public parks.

Reed, V. C., reviews the constitutional provisions and the Act of 1901 in the light of the same, and in pronouncing the opinion of the court, said:

> "In my judgment the only ground for attack upon this act is to be found in that part of section 2 which provides that the Commissioners may, in their discretion, charge therefor a nominal consideration only. It is quite clear that the grant provided for under the Act of 1901 is for a puplic purpose. It is equally clear that apart from the Act of 1894 the Legislature could devote the property of the State to any public purpose. It seems also manifest that the appropriation of these lands as property under the constitutional provision had in view the conversion of this property into money which was to be securely invested. There was left in the State, therefore, the discretion when and how to transmute this property into money and to make all reasonable regulations for the use of the property until

it was sold. It could probably grant a perpetual right to lay out its streets or highways through it, regarding the presence of such streets as likely to enhance the value of this property. So, too, perhaps, a privilege could be granted to a municipality to use it as a park until such times as the State thought it to the benefit of the school fund to transmute the land into money by sale or lease. So, too, I think, the State had a right to provide that under the conditions mentioned in the Act of 1901 a sale should be made exclusively to a municipality having control of a public park.

"The question, however, is whether it could make a perpetual gift of these lands to anyone, for this, it can not be doubted, is intended by the language of the legislative act. The grant is for an easement, which is practically perpetual and exclusive. There remains nothing of the least value to the State. The grant is intended to be gratuitous.

"While it is true that a board may charge the same rate for a grant to a municipal corporation for a public park as to any other grantee, nevertheless, the purpose for which the discretionary power was conferred upon the Riparian Board is manifest, and that purpose was executed in making this grant.

"For the extensive grant made to Atlantic City the consideration is $1, and for the restricted grant made to the complainants the consideration is $990.

"The grant to Atlantic City would have been null, if the same consideration had been charged for it as for other grants to riparian owners; for the power to charge nothing taints the statutory clause and entirely destroys its force as an authority to make any grants.

"In the language of Judge Earl, in *Stuart* v. *Palmer, 74 N. Y. 183*, 'the constitutional validity of a law is to be tested, not by what has been done under it, but by what, by its authority, may be done.'

"I am constrained to the conclusion that Atlantic City has no claim to the locus in quo under its grant." (*64 N. J. E., at p. 586.*)

But granting, for the purpose of argument, that the interpretation now presently given to the constitutional phrase "all money, stock and other property," is too broad, and that realty

cannot thereby permanently pass into the school fund, there is another aspect of the situation which demands attention.

The Acts of 1871 1872, 1894 and the following school laws have unquestionably devoted to the school fund all moneys arising by sale or lease from the State's riparian lands. At least, this is true as to all income arising or to arise therefrom since those acts became effective. Whether or not those lands themselves have permanently passed into the school fund, the income from them has so passed permanently and inviolably. This in itself would vest the school fund with an equitable interest in the sources of that income.

It has been held repeatedly in this State that "A gift of the rents and profits of land, in the absence of any expression of a different intention, is tantamount to a devise of the land itself." *Beasley, C. J., in Diament* v. *Lore, 31 N. J. L. 222*, citing cases in support, among them *Den* v. *Manners, Spencer, 144.*

> "The rule appears to be settled that the bequest of the income without limit as to time, or gift over which can operate, is a bequest of the principal, if there be no expression of a contrary intent. *Elton* v. *Sheppard, 1 Bro. Ch. C. 532; Haig* v. *Swiney, 1 Sim. & S. 487; Manning* v. *Craig, 3 Gr. Ch. 436; Craft* v. *Snook, 2 Beas. 121; Gulick* v. *Gulick, 12 C. E. Gr. 500.* The same rule applies whether the gift be direct, or through the intervention of a trustee. Ibid. So a devise of the income of land without limitation or devise over is equivalent to a devise of the land itself. *Den.* v. *Manners, Spenc. 144; Diament* v. *Lore, 2 Vr. 222; Post* v. *Rivers, 13 Stew. Eq. 22; Conynham* v. *Conynham, 1 Ves. Sr. 522;* Sir Thomas Plumer, V. C., in *Stretch* v. *Watkins, 1 Madd. 143.* The same rule applies to a gift of a perpetual annuity. *Huston* v. *Read, 5 Stew. Eq. 596.* * * * The operation of the rule is not defeated because some duty in realizing assets and securing and paying the income is cast upon the trustees. In *Earl* v. *Grim, 1 Johns. Ch. 499*, executors were directed by the will to rent or sell lands as they saw fit, and, in case of sale, to put the money at interest and pay the interest annually to G. P., &c. Chancellor Kent held that those who, by the terms of the will, were entitled to the interest were also entitled to the principal of the proceeds of sale."

Opinion by Grey, V. C., *in Passman* v. *Trust Co., 57 N. J. Eq. 273.* For further authorities, see *Amer. & Eng. Encyc. of Law, 2nd Ed., Vol. 16, page 148 (title estates for life-land itself). Ibid, Vol. 18, p. 711.*

In the matter under consideration there was no expression by the Legislature of any intention contrary to an appropriation of the lands themselves to the school, but instead a twice-repeated declaration of that identical purpose.

Upon this permanent appropriation of income, therefore, I also base my opinion that the Legislature has created a permanent and lasting trust in the lands of the State lying under water, of which trust the Riparian Commissioners, or whatever board may be delegated to have these lands in management and control, are the trustees and the school fund is the beneficiary.

As previously stated, I do not consider that this operates to prevent any alienation of the State's riparian lands. But the effect is to properly restrain any and all sales or leases for purely nominal considerations, or for such consideration as does not properly consider and include the present and future values of the lands so sold or leased. In a word, the familiar principles of trust estates apply to and govern the sale and lease of the State's lands lying under water.

The fifth question is as to the right of the Riparian Commissioners to grant lands under water in the bays and tributaries of the bays in this State, where the Oyster Commission has jurisdiction under the various enactments of the Legislature of this State.

The regulation and control of the oyster-growing lands of the State has been delegated by the Legislature to three commissions, as follows:

The Delaware Bay and Maurice River Oyster Commission;

The Ocean County Oyster Commission;

The Atlantic County Oyster Commission.

The eraliest of these, as now constituted, and I understand the question to be directed to present conditions, is the Delaware Bay and Maurice River Commission, created by an act of the Legislature of 1899 (*P. L. 1899, p. 506*). By this act, the commission thereby constituted was given "exclusive regulation and control" of "all oyster grounds, lands and beds included within the lands of the State of New Jersey under the tidal waters of the Delaware Bay and Maurice River Cove." In stating their powers the act provides:

"The State Oyster Commission shall have power and are hereby directed, as hereinafter provided, to lease to applicants therefor, any of the lands of the State under the tidal waters of the Delaware bay and Maurice river cove, south of the line * * * * to be exclusively used and enjoyed by such lessees for the taking, planting and cultivating of oysters."

Section 14 provides further:

"All moneys due for ground rentals, license fees, or otherwise made collectible under the provisions of this act, shall be received and collected by the oyster superintendent, for the sole use of the State of New Jersey, as public moneys belonging to the State, and shall be accounted for and paid over as such in manner hereinafter provided.'

This act was amended in 1901 (*P. L. 1901, p. 307*), but the parts quoted were not changed; in 1902 (*P. L. 1902, p. 62*) the operations of this commission were extended to certain lands under tidal waters in Raritan bay, therein particularly specified. These limits in Raritan bay were further extended in 1905 (*P. L. 1905, p. 482*).

The next commission to be constituted was the Ocean County Oyster Commission (*P. L. 1902, p. 170*). Like its prototype, this commission was given "exclusive regulation and control" of "all oyster grounds, lands and beds included within lands of the State of New Jersey under the tidal waters of the county of Ocean." The commission was empowered "to lease to applicants therefor any of the lands of the State under the tidal waters of the county of Ocean, not set apart as public clam grounds."

The provision with reference to the payment of all income into the general State treasury coincides with the similar provison in the act creating the Delaware Bay Commission.

This act was amended in 1903 (*P. L. 1903, p. 638*) and in 1905 (*P. L. 1905, pp. 249, 337*), without, however, changing the clauses quoted or referred to.

The last commission to be created was the Atlantic County Oyster Commission (*P. L. 1905, p. 145*). In the language of the prior acts, this commission was given "exclusive regulation and control" of "all oyster grounds, lands and beds included within lands of the State of New Jersey under the tidal waters of the county of Atlantic." The commission was given power "to lease to applicants therefor any of the lands of the State

under the tidal waters of the county of Atlantic not set apart as public clam grounds, * * * * and provided further, that nothing in this act shall be construed to give said commissioners any jurisdiction or control over any lands to which the riparian grant has been made by the Riparian Commissioners of this State."

This act contains the same provision with reference to the payment of all income arising under the act into the general treasury of the State.

It is to be noted that the act constituting the Atlantic County Oyster Commission contains a proviso which does not appear in either of the two acts previously mentioned. This indicates that the controversy over the jurisdictions of the Oyster Commissions and the Riparian Commission had, at the time of the passage of the last act, attracted the attention of the Legislature, and that it was their purpose, by this proviso, to exclude from the jurisdiction of the Oyster Commission of Atlantic County any land which had previously been leased or granted by the Riparian Commission, and, by implication, to include within the jurisdiction of that Oyster Commission all lands lying under tide water in Atlantic County not so previously granted or leased.

This is a clear indication of what, in my judgment, is the resulting and present division of jurisdiction. By later and inconsistent legislation, certain lands lying under water have been removed from the jurisdiction of the Riparian Commission and put under the exclusive regulation and control of the respective Oyster Commissions for particular purposes. The Riparian Commission has no power, therefore, to exercise any domination over any of the lands transferred to any or all of the Oyster Commissions since the time when each of those creative acts became effective in its particular section. Over those lands which lie within the limits prescribed by these acts the Oyster Commissions have full and sole control for the purposes and with the limitation prescribed for each commission by the act creating it. This does not transfer to the Oyster Commissions any of the powers of the Riparian Commission, but leaves them supreme within their specified boundaries for the purposes of their creation.

One feature of these acts rests upon a misconception, and, therefore, is invalid in each instance. The income from all riparian lands was, prior to the creation of the present Oyster Commissions, permanently appropriated to the school fund. It was not within the power of the Legislature, therefore, to alter

this appropriation, and by changing the management of some portion of the riparian lands of the State, divert the income therefrom into the general treasury and away from the school fund. The trustee may be changed, but not the beneficiary. This section, however invalid in itself, does not so remove an essential feature of these acts as to cause them all to fall with it. The necessary incidents to operation and realization of the purpose and object of the Oyster Commission Acts still remain in each, without the objectionable section. Therefore, the objectionable section may be stricken out and the several acts still stand as valid and effective.

But these acts should be promptly amended to relieve this situation, and to provide for the payment of the income arising from these riparian lands by the Oyster Commissions into the school fund.

The sixth question is, "What is the effect of any grant made by the Riparian Commissioners to the owners of uplands in the bays and in the tributaries of the bays in the oyster districts of this State, where the State has appropriated money for the seeding of those lands with oysters, and where the Oyster Commissioners, under those laws, have leased the lands to independent oyster men, under valid leases running for a year, during which the land was conveyed by the Riparian Commissioners?"

This question is answered by the discussion of the matters presented by the preceding question. When the Oyster Commissions acquired jurisdiction in their several districts the Riparian Commissioners lost their jurisdiction therein, since the right to lease cannot be resident in two bodies at the same time with power in one to reverse and render nugatory the grants of the other at will. And by inconsistent and subsequent legislation, as has been said, exclusive regulation and control was vested in the later constituted Oyster Commission. Therefore, grants made by the Riparian Commissioners, under the circumstances stated in the question, are ultra vires and void, and the grantees took nothing thereby.

The seventh question is asked to the effect of grants made by the Riparian Commission of lands lying under water opposite the foot of streets and highways, with or without notice to the municipality.

A review of the judicial decisions of the State and Federal courts will show that it is almost impossible to draft an answer to this question which will have an absolute application to every state of facts that may arise, or which will be in complete accordance with the decisions of the courts, in view of the present conflict between the State and Federal decisions. I believe the earliest decision in the State of New Jersey, directly dealing with this question, to be *Mayor of Jersey City* v. *Morris Canal and Banking Co., 12 N. J. E.,* in which, at page 558, the Court said:

> "The doctrine, that when the shore owner, through whose lands a street comes to the shore, fills in in front of his land, and also in front of the terminus of the street, the public is entitled to the extension of the street as if the land filled in were an alluvion, is the reasonable doctrine and in strict accordance with principle."

But the facts in this case were peculiar, and therefore, to be carefully scrutinized before this decision is to be accepted as a general authority. Perhaps the most widely-discussed and cited case on this subject is *Hoboken Land and Improvement Co.* v. *Hoboken, 36 N. J. L. 540.* This was an action of ejectment to recover a strip of land within the lines of Fourth street, in the city of Hoboken, between River street and the line of low-water mark in the Hudson river, as it was when the suit was commenced. In 1804 Colonel John Stevens filed what was known as the Loss Map of the new city of Hoboken, by which a dedication was effected of Fourth street extending to ordinary high water on a course running at a right angle with the river.

Defendants were incorpoated in February, 1838, and empowered to fill up, possess and enjoy all land covered with water fronting and adjoining land that might be owned by them. Subsequently, the defendants became the owners of the entire tract covered by the map, except such parts as had been previously conveyed, and subsequent to this conveyance the company, under the powers in their charter, filled in a considerable distance beyond the line of high water as it existed when the Loss Map was made.

The opinion of the Court was pronounced by Mr. Justice Depue, starting with the conclusion that this location of Fourth street demonstrated conclusively that its purpose was to provide a means of access for the public to the navigable waters. Justice Depue cited the case above referred to, as well as *Newark Company* v. *Mayor of Newark, 2 McCarter 64,* and went on to say:

"In my judgment, these cases declare the law correctly on this subject. The essence of the gift is the means of access to the public waters of the river, the advantage of which induced the growth of a city, by reason of its adjacency and connection with the important navigable waters of the Hudson, which gave a peculiar commercial value to the lots put in the market by the dedication, which can only be preserved by maintaining unbroken the connection of the streets with the navigable river. Any obstructions of that access would not only derogate from the effect of the gift, but would also be a public nuisance."

Another branch of this same dispute was before the United States Circuit Court in the case of *Hoboken* v. *Pennsylvania Railroad Company, 124 U. S. 656.*

The opinion in this case was pronounced by Justice Stanley Matthews. He refers to the decision of the United States Court of Errors and Appeals in the case of *Hoboken Land and Improvement Co.* v. *Hoboken,* and defines the terms and scope of that judgment. He lays stress upon the fact that for the first time the Riparian Act of 1869 is injected into the case, under the provisions of which act the State of New Jersey had, as he found defined and certified in the findings of fact, for a valuable consideration, conveyed to the Hoboken Land and Improvement Company, by deeds and conveyances properly executed, or to its assigns, the premises claimed in the several suits against the defendants other than the Pennsylvania Railroad Company. He says:

"In the examination of the effect to be given to the Riparian Laws of the State of New Jersey by the Act of April 11, 1864, in connection with the supplementary Act of March 31, 1869, it is to be borne in mind that the lands below high-water mark, constituting the shores and submerged lands of the navigable waters of the State, were, according to its laws, the property of the State as sovereign. Over these lands it had absolute and exclusive domination, including the right to appropriate them to such uses as might best serve its views of the public interest, subject to the power conferred by the Constitution upon Congress to regulate foreign and interstate commerce. * * * The intent of this legislation is, therefore, manifest to treat

> the title and interest of the State in these shore lands as a distinct and separate estate, to be dealt with and disposed of in accordance with the terms of the statutes. * * * The title acquired by such a grantee, therefore, differs in every respect from that of a riparian owner to the alluvial accretions made by the changes in a shifting stream which constitutes the boundary of his possessions. . The latter comes to him by virtue of his title to land bounded by a stream, and belongs to him because it is within the description of his original grant; but the title under the New Jersey grants is not only of a new estate, but in a new subject divided from the upland or riparian property by a fixed and permanent boundary. * * * In other words, under these grants, the land conveyed is held by the grantees on the same terms on which all other lands are held by private persons under absolute titles, and every previous right of the State of New Jersey therein, whether proprietary or sovereign, is transferred or extinguished, except such sovereign rights as the State may lawfully exercise over all other private property."

This decision has great force and bearing upon the courts of this State for the reason that it was the first interpretation of the Riparian Acts of 1864 and 1869, and has practically determined the force and effect of that legislation and grants made thereunder, to which the courts of this State would be obliged to give at least most respectful consideration.

That this is true is shown by *Elizabeth* v. *Central R. R. Co., 53 N. J. L. p. 491.* This was an opinion by Dixon, *J.*, in which the question was again as to the extension of a highway over a high-water mark existing at the time of the dedication to another high-water mark fixed by artificial reclamation. The attention of the court was directed to the two cases previously cited (the Hoboken Land case and the case of *Hoboken* v. *The Pennsylvania Railroad Company* in the United States Courts) and Justice Dixon pointed out the basis for each decision.

In the first case he said:

> "The Court of Errors and Appeals decided that legislative authority granted to individuals or corporations to fill up, occupy, possess and enjoy all lands covered with water fronting and adjoining lands owned by them, will not extinguish the public right of access to

navigable waters by a street on the lands of such owners, which by dedication terminated at the high-water line, but such street will run to the water over the lands reclaimed under such authority. * * * The Supreme Court of the United States decided that grants made by the State of New Jersey, under our general Riparian Act, secure to the grantees the whole beneficial interest and estate in the property described, for their exclusive use for the purposes expressed in the grants, and include every right of use or occupancy on the part of the public, transferring to the grantees or extinguishing every previous right of the State, whether proprietary or sovereign, except such sovereign rights as the State may lawfully exercise over all other private property. * * * The distinction between the subjects on which these judgments were rendered is obvious. In the first case, the party claiming to have extinguished the public right of access to the water over the highway had a mere license to fill in and enjoy undefined land under water as a riparian owner, and the license was deemed subject to the implied limitation that the licensee should acquire against the State no greater rights in the land reclaimed than he had in the ripa in front of which the reclamation took place. But in the later case, the claimant, was the grantee of all the rights of the State in specified lands under water, founding its title upon express words of conveyance, the reasonable force of which excluded the reservation implied against the licensee."

The decision in this case was that the facts stated proved the existence of a public highway extending to the waters of Arthur Kill, and that on November 12, 1874, the State of New Jersey granted to the Central Railroad Company the land below the original high-water line in front of the highway, with all the rights of the State therein, and that the highway did not thereafter extend below the original high-water line over land artificially reclaimed.

See also *Ocean City* v. *Shriver, 64 N. J. L. 550.*

It seems from this review that each case in all probability would stand or fall upon its own peculiar statement of fact, the tendency of the courts being, as I conceive it, to interpret the riparian grant from the State to extinguish any efforts on the

part of the owner of the ripa to subject the State's land lying under water to a public easement or servitude. This view would not apply to any change in the high-water line arising by accretion or alluvion. Nor would it apply to a case where a dedication had been made by the owner of the ripa also the holder of a riparian grant from the State, issued prior to the dedication. But the situation is further complicated by a more recent decision of the United States Court. *Ill. Central R. R. Co.* v. *Ilinois, 146 U. S. 387.* This opinion seemingly reverses the case of *Hoboken* v. *Pennsylvania R. R. Co.,* previously referred to, upon the theory that the public lands of the State were held by the State by virtue of its sovereignty in trust for the public. This trust is one which cannot be alienated except in certain instances of parcels used for the improvement of the interest held, or when parcels can be disposed of without detriment to the public interest in the lands and waters remaining; that abdication of the general control of the State over the lands under navigable waters of the State in any harbor or bay or sea or lake, is not consistent with the exercise of that trust which requires the government of the State to preserve such waters for the use of the public.

The effect of this decision is to further complicate the situation and render more impossible any accurate forecaste of judicial decision upon the law in reference to any particular state of facts; nevertheless, I incline to the opinion that the courts of this State would follow, with reference to the varying states of facts, the decisions above referred to (*Hoboken* v. *Hoboken Land and Improvement Co.,* the decision of the United States courts in *Hoboken* v. *Pennsylvania R. R. Co.,* as applied, interpreted and extinguished in the case of *Elizabeth* v. *New Jersey Central R. R. Co.*), the effect of which I have already pointed out.

The matter of notice to the municipality is purely a matter of regulation, not necessarily a matter of right. Assuming the present regulations to be valid, they require that the owner of the upland be given six months' notice before his adjoining land under water can be elsewhere granted, and under this regulation the municipality would be properly entitled to this notice.

The eighth question is disposed of by the opinion previously expressed as to the powers of the present Riparian Commission.

In presenting this opinion to you I regret that it is impossible to safely make catagorical answers to certain of the questions proposed, but to do so would be almost impossible and apt to be misleading. I have, therefore, contented myself with a full expression of the authorities upon which any opinion must be based, and stated as clearly as possible my judgment thereon.

Very truly yours,

NELSON B. GASKILL,
Asst. Atty.-General.

The criticisms in this report referring to the actions of the Board preceding the present Riparian Commission apply to the action of the Board as a body, and not to all of the individual members thereof, as the testimony shows that one member of the preceding Board, John J. Farrell, was not influenced by the advice of Counsel to the Board, and had voted invariably against the grants which appear to have been of a questionable character.

EDMUND W. WAKELEE, (Chairman).
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JAMES F. MINTURN,
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